

FILE COPY

VOLUME I

TRANSCRIPT OF RECORD.

Supreme Court of the United States
OCTOBER TERM, 1960

No. 80

PAN AMERICAN PETROLEUM CORPORATION,
PETITIONER,

—vs.—

SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY, ET AL.

No. 81

TEXACO, INC., PETITIONER,

—vs.—

SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY, ET AL.

ON WRITS OF CERTIORARI TO THE SUPREME COURT OF THE
STATE OF DELAWARE

PETITIONS FOR CERTIORARI FILED MAY 6, 1960
CERTIORARI GRANTED JUNE 13, 1960

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 80

PAN AMERICAN PETROLEUM CORPORATION,
PETITIONER,

—vs.—

SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY, ET AL.

No. 81

TEXACO, INC., PETITIONER,

—vs.—

SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY, ET AL.

ON WRITS OF CERTIORARI TO THE SUPREME COURT OF THE
STATE OF DELAWARE

INDEX

	Original	Print
Proceedings in the Supreme Court of the State of Delaware in Case No. 69		
Petition for writ of prohibition	1	1
Exhibit—Opinion of the Superior Court of the State of Delaware in and for New Castle County, by J. Christie, dated November 12, 1959 in Civil Action Nos. 670, 708 and 671	9	8
Affidavit of James M. Tunnell, Jr.	34	21

Original Print

Order upon petition for writ of prohibition	37-	22
Answer of intervening respondent Cities Service Gas Company to rule to show cause	40	24
Petitioners' main brief in support of their petition for a writ of prohibition (excerpts)	46	20
Reply brief of petitioner, Pan American Petroleum Corporation, in support of the petition for a writ of prohibition, etc. (excerpts)	52	31
Opinion, Southerland, Ch. J.	55	33
Final judgment	75	47
Order extending stay	78	49
Order to certify the record	80	50
Order extending stay	83	51
Clerk's certificate (omitted in printing)	85	51
Record from the Superior Court of the State of Delaware in and for New Castle County in Civil Action No. 671	86	52
Complaint	86	52
Answer	93	59
Exhibit A—Letter from Cities Service Gas Company to The Texas Company, dated Sep- tember 6, 1949 with enclosure, Gas Purchase Contract (Wellhead Form)	104	68
Exhibit C—Gas Purchase Contract between Sunflower Natural Gas Company, Inc. and Cities Service Gas Company, dated January 10, 1950	115	82
Exhibit E—Gas Purchase Contract between Western Natural Gas Company and Cities Service Gas Company, dated September 29, 1949	126	95
Defendant's requests for admissions by plaintiff	139	110
Exhibit A—Moscow Block and Pleasant Valley Block giving lease file number, description, etc.	149	119
Exhibit B—Letter from Columbian Fuel Cor- poration to Cities Service Gas Company, dated July 29, 1949	152	122

Record from the Superior Court of the State of Delaware in and for New Castle County in Civil Action No. 671—Continued

Original Print

Defendant's requests for admissions by plaintiff
—Continued

Exhibit K—Letter from Cities Service Gas Company to The Texas Company, dated May 13, 1955	154	124
Exhibit L-1—Letter from The Texas Company to Federal Power Commission, dated September 24, 1954	155	126
Exhibit L-2—Rate schedule between The Texas Company and Cities Service Gas Company, dated June 16, 1949	157	127
Exhibit L-3—Table I of the Texas Company's Contract of June 16, 1949	161	130
Exhibit L-4—Letter from Federal Power Commission to The Texas Company, dated February 7, 1955	178	138
Exhibit L-5—Letter from The Texas Company to Federal Power Commission, dated June 13, 1957 transmitting change in rate schedule effective July 1, 1957	183	144
Exhibit L-6—Letter from Federal Power Commission to The Texas Company, dated July 12, 1957	190	149
Exhibit L-8—Letter from Federal Power Commission to The Texas Company, dated July 19, 1957	192	151
Exhibit L-9(1)—Letter from The Texas Company to Federal Power Commission, dated 1957	193	152
Exhibit L-9(8)—Letter from Cities Service Gas Company to The Texas Company, dated January 21, 1954	194	153
Exhibit L-10—Letter from Federal Power Commission to The Texas Company, dated August 29, 1951	195	155
Exhibit L-11—Letter from Federal Power Commission to The Texas Company	197	157

Record from the Superior Court of the State of Delaware in and for New Castle County in Civil Action No. 671—Continued		
Stipulation and order for amendments of complaint and answer	200	159
Plaintiff's requests for admissions by defendant	204	161
Exhibit A—Voucher check of Cities Service Gas Company to The Texas Company, dated February 25, 1954	210	168
Exhibit B—Letter from The Texas Company to Cities Service Gas Company, dated March 2, 1954	211	169
Defendant's motion for summary judgment	213	170
Affidavit of Andrew B. Kirkpatrick, Jr.	216	171
Exhibit A—Application for certificate of public convenience and necessity filed pursuant to Order No. 174-A	218	173
Exhibit B—Findings and order issuing certificates of public convenience and necessity and dismissing applications in part	227	179
Exhibit C—Letter from The Texas Company to Federal Power Commission, dated December 16, 1955	236	191
Affidavit of Paul F. Schlicher	237	192
Defendant's answers to plaintiff's requests for admissions served January 19, 1959	239	193
Plaintiff's affidavit in opposition to defendant's motion for summary judgment and in support of plaintiff's motion for summary judgment	247	199
Exhibits Williams 1 and 2—To All Kansas Royalty Owners, etc. dated July 20, 1955 and March 25, 1958	248	200
Supplemental answers of plaintiff, Cities Service Gas Company to defendant's request for admissions by plaintiff	252	204
Main brief of defendants in support of their motions for summary judgment (excerpts)	264	219

INDEX

v

	Original	Print
Record from the Superior Court of the State of Delaware in and for New Castle County in Civil Action No. 671—Continued		
Certified copies of official papers	269	221
Exhibit D(3)—Secretary of F.P.C.'s certificate with pages from minutes of the Commission's meeting of December 29, 1954	271	222
Pages 52752, 52756 and 52912	272	222
Exhibit D(4)—Secretary of F.P.C.'s certificate with pages from minutes of the Commission's meeting of August 21, 1957	275	226
Pages 75036, 75041 and 75159	276	226
Defendants' reply to plaintiff's supplemental memorandum (excerpts)	279	230
Record from the Superior Court of the State of Delaware in and for New Castle County in Civil Action No. 722	286	232
Complaint	286	232
Exhibit A—Gas Purchase Contract between Stanolind Oil and Gas Company, and Cities Service Gas Company, Hugoton Field, Kansas, dated June 23, 1950	293	238
Exhibit B—Memorandum opinion and order of the State Corporation Commission of Kansas, dated December 2, 1953	316	261
Exhibit C—Kansas General Statutes of 1949 (excerpts)	326	268
Exhibit A to motion of defendant for stay of action	328	269
Petition in the District Court of Seward County, Kansas, No. 7219	328	269
Motion by plaintiff for summary judgment and affidavits and exhibits in support thereof	336	278
Exhibit 3—Pan American Petroleum Corporation's FPC Gas Rate Schedule No. 84 with certification by records officer of FPC	339	281
Exhibit 4—Order approving proposed settlement and requiring tariff revisions to be filed and terminating proceedings issued May 25, 1956 with certification by records officer of FPC	553	555

Record from the Superior Court of the State of Delaware in and for New Castle County in Civil Action No. 722—Continued

Motion by plaintiff for summary judgment and affidavits and exhibits in support thereof—Continued

Exhibit 5—Notice dated February 19, 1954 from Stanolind Oil and Gas Company designated Edwin L. Cox, FPC Gas Rate Schedule No. 2, Supplement No. 1 with certification by records officer of FPC	582	587
Exhibit 6—Letter for Stanolind Oil and Gas Company to the FPC dated November 16, 1954 with certification by records officer of FPC	584	589
Exhibit 6A—Letter of transmittal from Stanolind Oil and Gas Company to FPC dated November 15, 1954 with certification by records officer of FPC	587	593
Exhibit 7—Letter from FPC to Stanolind Oil and Gas Company dated March 2, 1955 with certification by records officer of FPC	594	600
Exhibit 10—Plaintiff's affidavit in support of its motion for summary judgment	601	608
Exhibit 11A—Letter from Cities Service Gas Company to Stanolind Oil and Gas Company, dated January 21, 1954	602	609
Exhibit 11B—Letter from Stanolind Oil and Gas Company to Cities Service Gas Company, dated January 27, 1954	603	611
Plaintiff's response to defendant's motion to stay (excerpts)	605	612
Exhibit D—Voucher check of Cities Service Gas Company to Stanolind Oil and Gas Company, dated February 25, 1954	609	614
Brief of defendant, Pan American Petroleum Corporation in support of its motion for stay (excerpts)	611	615

INDEX

vii

	Original	Print
Record from the Superior Court of the State of Delaware in and for New Castle County in Civil Action No. 722—Continued		
Stipulation dated May 7, 1959	614	617
Amendment to complaint	618	619
Answer of defendant, Pan American Petroleum Corporation	621	620
Exhibit A—Secretary of F.P.C.'s certificate with pages from minutes of the Commission's meeting of January 26, 1955	640	635
Pages 53320 and 53473	641	636
Exhibit B—Letter order of F.P.C. dated March 2, 1955	643	639
Exhibit C—Transmittal letter dated June 28, 1957 from Pan American Petroleum Corporation to FPC relative to Rate Schedule No. 84	649	647
Exhibit D—Secretary of F.P.C.'s certificate with pages from minutes of the Commission's meeting of July 24, 1957	653	651
Pages 74065 and 74198	654	651
Exhibit E—Letter order of FPC dated August 19, 1957	656	654
Defendant's motion for summary judgment	658	656
Certified copies of official papers	661	657
Exhibit F—Letter from Cities Service Gas Company to FPC dated February 5, 1957 in the matter of Magnolia Petroleum Company's Proposed Rate Schedule No. 3 with certification by records officer of FPC	662	658
Exhibit G—Letter from Cities Service Gas Company to FPC dated February 26, 1957 in the matter of Magnolia Petroleum Company with certification by records officer of FPC	674	669
Exhibit H—Order accepting rate schedule for filing issued March 21, 1957 in the matter of Magnolia Petroleum Company with certification by records officer of FPC	683	679

Record from the Superior Court of the State of Delaware in and for New Castle County in Civil Action No. 722—Continued		
Certified copies of official papers—Continued		
Exhibit I—Letter dated April 17, 1957 in the matter of Magnolia Petroleum Company's rate schedule No. 3 transmitting the "Application of Cities Service Gas Company for Rehearing" with certification by records officer of FPC	686	682
Exhibit J—Order modifying order accepting rate schedule for filing and denying petitions for rehearings issued May 17, 1957 with certification by records officer of FPC	702	696
Exhibit K—Letter from Cities Service Gas Company to FPC dated April 15, 1958 with certification by records officer of FPC	705	699
Exhibit L—Correspondence between the Secretary, FPC and Cabot Carbon Company with enclosures with certification by records officer of FPC	709	703
Exhibit M—Secretary of F.P.C.'s certificate with pages from minutes of meeting of June 13, 1956	727	722
Pages 63917, 63922 and 64052	728	722
Exhibit N—Order revising ruling of presiding examiner, etc. in the matter of Tennessee Gas Transmission Company with certification by records officer of FPC	731	726
Exhibit O—Order affirming ruling of presiding examiner and denying appeal, etc. in the matter of Tennessee Gas Transmission Company with certification by records officer of FPC	734	729
Affidavit of John F. Jones in support of defendant's motion for summary judgment	739	734
Exhibits A & B—Letters from Stanolind Oil and Gas Company to FPC dated May 3, 1955 and May 11, 1955	743	738

INDEX

4X

Original Print

Record from the Superior Court of the State of Delaware in and for New Castle County in Civil Action No. 722—Continued

Affidavit of John F. Jones in support of defendant's motion for summary judgment—Continued

Exhibit C—Letter authorization from FPC to Stanolind Oil and Gas Company, dated June 14, 1955

745 740

Exhibit D—Letter authorization from FPC to Stanolind Oil and Gas Company, dated June 29, 1955

746 742

Exhibit E—F.P.C. Order No. 197 modifying rules and regulations with respect to supplements reflecting the 1% severance tax of the state of Kansas

747 743

Exhibit G—Letter of transmittal dated September 23, 1957 re Supplement No. 81 to FPC Gas Rate Schedule No. 84

749 746

Exhibit H—Letter authorization from FPC to Pan American Petroleum Corporation, dated October 18, 1957

750 747

Exhibit I—Letter of transmittal dated January 6, 1958 re Supplement No. 86 to FPC Gas Rate Schedule No. 84

752 750

Exhibit J—Letter authorization from FPC to Pan American Petroleum Corporation, dated February 26, 1958

753 751

Affidavit of Norton Standeven in support of defendant's motion for summary judgment

755 753

Affidavit of Carroll L. Gilliam in support of defendant's motion for summary judgment

758 755

Affidavit of Ralph L. Marek in support of defendant's motion for summary judgment

762 758

Exhibits to defendant's requests for admissions by plaintiff

2g—Form letter, dated May 13, 1955 from Cities Service Gas Company, to Stanolind Oil & Gas Company requesting various information regarding defendant's filing with the FPC concerning Rate Schedule No. 84

765 760

	Original	Print
Record from the Superior Court of the State of Delaware in and for New Castle County in Civil Action No. 722—Continued		
Exhibits to defendant's requests for admissions by plaintiff—Continued		
2h—Reply letter from Stanolind Oil and Gas Company to Cities Service Gas Company, dated May 20, 1955	766	762
2i—Letter from Pan American Petroleum Corporation to Cities Service Gas Company, dated August 29, 1957	767	763
Plaintiff's brief in support of its motion for summary judgment (excerpts)	768	764
Brief of plaintiff in opposition to defendant's motion for summary judgment (excerpts)	779	771
Exhibit A—Brief of plaintiff in opposition to defendant's motions for summary judgment in C.A. No. 670 and 708 and 671 (excerpts)	781	772
Exhibit B to reply brief of defendant in support of its motion for summary judgment	793	779
Defendants' reply to plaintiff's supplemental memorandum (excerpts) (copy) (omitted in printing)	793	779
Orders allowing certiorari	794	780

[fol. 1]

**IN THE SUPREME COURT OF THE
STATE OF DELAWARE**

No. 69 1959

COLUMBIAN FUEL CORPORATION, a Delaware corporation,
TEXACO, INC., a Delaware corporation,

and

PAN AMERICAN PETROLEUM CORPORATION,
a Delaware corporation; Petitioners,

—v.—

THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR
NEW CASTLE COUNTY, and the HONORABLE ANDREW D.
CHRISTIE, sitting as a Judge of that Court, Respondents.

PETITION FOR WRIT OF PROHIBITION—

• Filed November 18, 1959

*To the Honorable the Justices of the Supreme Court of the
State of Delaware:*

Petitioners Columbian Fuel Corporation, Texaco, Inc.,
and Pan American Petroleum Corporation, respectfully
petition this Court for the issuance of a writ prohibiting
the respondents, the Superior Court of the State of Dela-
ware in and for New Castle County, and the Honorable
Andrew D. Christie, sitting as a judge of that Court, from
proceeding further in the following civil actions:

—
C. A. 670, 1958
—

• CITIES SERVICE GAS COMPANY, a corporation, Plaintiff,

—v.—

COLUMBIAN FUEL CORPORATION, a corporation, Defendant.

C. A. 671, 1958

CITIES SERVICE GAS COMPANY, a corporation, Plaintiff,

—v.—

THE TEXAS COMPANY, a corporation, Defendant.

C. A. 708, 1958

CITIES SERVICE GAS COMPANY, a corporation, Plaintiff,

—v.—

COLUMBIAN FUEL CORPORATION, a corporation, Defendant.

[fol. 2]

C. A. 722, 1958

CITIES SERVICE GAS COMPANY, a corporation, Plaintiff,

—v.—

PAN AMERICAN PETROLEUM CORPORATION,
a corporation, Defendant.

The basis for this petition is that a state court has no jurisdiction of the subject matter of these civil actions.

In support hereof petitioners respectfully represent:

1. The plaintiff in Civil Actions 670, 671, 708 and 722, 1958, in the Superior Court of the State of Delaware in and for New Castle County (hereinafter "Civil Actions 670, 671, 708, and 722"), is Cities Service Gas Company, a Delaware corporation (hereinafter referred to as "plaintiff"). Petitioner Columbian Fuel Corporation, a Delaware corporation, is the defendant in Civil Actions 670 and 708, petitioner Texaco, Inc., a Delaware corporation (formerly "The Texas Company"), is the defendant in Civil Action 671, and petitioner Pan American Petroleum Corporation, a Delaware corporation, is the defendant in Civil Action 722 (each is sometimes hereinafter referred to as "defendant").

2. Plaintiff is an interstate pipeline company which purchases natural gas where produced, transports it interstate

to areas of consumption, and there resells it to local distributing companies. Defendants produce natural gas and sell it to plaintiff for use in its pipeline system.

3. By Civil Actions 670, 671, 708, and 722, plaintiff seeks to recover what it avers were overpayments made by it to defendants for natural gas, \$439,406.44 being the amount [fol. 3] demanded in Civil Action 670, \$412,955.95 in Civil Action 671, \$35,995.19 in Civil Action 708, and \$10,324,468.67 in Civil Action 722.

In its complaints plaintiff in effect avers that it was required during the period in question to make the alleged overpayments to the defendants because of a state administrative order, fixing a minimum price for sales of natural gas, which plaintiff alleges has since been determined by the Supreme Court of the United States to be invalid because excluded by a federal statute, the Natural Gas Act, 15 U.S.C.A. §§ 717(a) *et seq.* Plaintiff concludes its complaints by alleging that each defendant agreed to make refunds, that the payments had been made involuntarily by plaintiff, and that they constituted an unjust enrichment of each defendant.

In its answer each defendant denied these allegations of the complaints and alleged, among other things, that during the period in question the sales to plaintiff were subject to regulation under the Natural Gas Act and that the only lawful prices for those sales were controlled by the Natural Gas Act or by rate schedules on file with the Federal Power Commission thereunder.

4. After pleading, each defendant established, by discovery and affidavits, that plaintiff and defendant were both natural gas companies subject to regulation by the Federal Power Commission under the Natural Gas Act and that, during the major portion of the period in question, defendant had had a rate schedule on file with the Federal Power Commission, under the Natural Gas Act, for its sales to plaintiff.

5. Each defendant thereafter moved for summary judgment on the ground, among others, that the "only lawful price for the sales of natural gas by defendant to plaintiff, referred to in the complaint," either was "fixed by a rate filed with and accepted by the Federal Power Commission,

[fol. 4] under its regulations prescribed under the Natural Gas Act, 15 U.S.C.A. §§ 717(a) *et seq.*, and plaintiff does not base its claim upon that filed rate," or was "prescribed by the Natural Gas Act, 15 U.S.C.A. §§ 717(a) *et seq.*, and plaintiff does not base its claim upon that Act."

6. Each main brief filed in support of those motions for summary judgment was in substance identical. In its answering brief, which was in substance identical in each of the actions, plaintiff for the first time agreed that the only lawful rates for the sales in issue were the filed rates with the Federal Power Commission. In light of plaintiff's brief, defendants at p. 23 of their reply briefs, which were identical, summed up their positions:

"If Cities [plaintiff] stands on common law bases, claiming a common law price, then Cities' claims are defeated, for as Cities has agreed, it 'can claim no rate as a legal right that is other than the filed rate, . . .'. On the other hand, if Cities does now make a claim on the filed rate, then Cities is out of this court, for there is no power here to adjudicate it."

In their reply brief, defendants then went on to argue that the "federal courts have exclusive jurisdiction of claims based upon the Natural Gas Act and rates on file with the Federal Power Commission under the Act." Moreover, an identical supplemental memorandum, directed solely to the jurisdictional issue, was filed by plaintiff in each of the actions, and an identical answering memorandum was filed by each of the defendants.

7. In support of their jurisdictional argument, defendants relied, in part, upon the decision in *Montana-Dakota Utilities Co. v. Northwestern Public Service Co.*, 341 U. S. 246, 251 (1951), which holds that a purchaser "can claim no rate as a legal right that is other than the filed rate, whether fixed or merely accepted by the Commission, and [fol. 5] not even a court can authorize commerce in the commodity on other terms"; upon § 154.21 of the Federal Power Commission Regulations, which provide that no natural gas company "shall directly or indirectly, demand, charge or collect any rate or charge for or in connection with the

... sale of natural gas, subject to the jurisdiction of the Commission . . . different from those prescribed in its effective tariff and executed service agreements on file with the Commission . . . "; and upon § 22 of the Natural Gas Act, 15 U.S.C.A. § 717u, which states:

"The District Courts of the United States, the District Court of the United States for the District of Columbia, and the United States courts of any territory or other place subject to the jurisdiction of the United States shall have exclusive jurisdiction of violations of this Act or the rules, regulations and orders thereunder, and of all suits in equity and actions at law, brought to enforce any liability or duty created by, or to enjoin any violation of, this Act or any rule, regulation or order thereunder."

8. On November 12, 1959, after presentation of oral argument in support of defendants' motions for summary judgment in Civil Actions 670, 671, and 708, the Superior Court, acting through the Honorable Andrew D. Christie, sitting as a judge thereof, filed an opinion in those actions in which it decided to deny defendants' motions for summary judgment filed therein. A copy of that opinion is attached as an Exhibit hereof. In its opinion, the Court found that, at least as to the major period involved, the only rate that could be claimed as a legal right was the rate under the Natural Gas Act but concluded that plaintiff asserted such a claim and that the Superior Court had jurisdiction of it.

9. After the filing of defendants' motions for summary judgment in Civil Actions 670, 671, and 708 and the fixing of a brief and argument schedule thereon, plaintiff moved for summary judgment in each of those cases. A brief [Vol. 6] schedule was then fixed on plaintiff's motions for summary judgment, but after the presentation of oral argument on defendants' motions for summary judgment in those cases, the Superior Court entered an order in each of those cases directing that the "time for defendant to file its answering brief on plaintiff's pending motion for summary judgment is deferred to and including the twenty-

first day after the court files its opinion on the defendant's motion for summary judgment which is presently under advisement," and that further proceedings on plaintiff's motion be likewise deferred.

10. In Civil Action 722 defendant stipulated to a concurrent briefing schedule and the same argument date for presentation of its motion for summary judgment and the motion for summary judgment filed therein by plaintiff. That stipulation concluded with a provision that "[a]n agreement underlying and controlling the above schedule is that this defendant shall not be required to argue or file briefs in respect to the plaintiff's motion for summary judgment prior to argument or the filing of the corresponding briefs on plaintiff's motions for summary judgment in either of its presently pending refund suits against Columbian Fuel Corporation or The Texas Company (1958 Civil Actions No. 670, No. 671 and No. 708, respectively)." Because of that stipulation argument on defendant's motion for summary judgment has not been held in Civil Action 722, but briefs have been filed therein on defendant's motion which are in substance identical to the briefs filed in Civil Actions 670, 671, and 708, in support of the defendants' motions in those cases which were decided by the opinion of the Superior Court dated November 12, 1959, and the time for the filing of briefs on plaintiff's motion in Civil Action 722 is now also running.

[fol. 7] 11. Petitioners (heretofore "defendants") aver that jurisdiction of claims concerning rates under the Natural Gas Act is exclusively invested in the federal courts, or in the Federal Power Commission, and that the courts of this state have no jurisdiction thereof.

12. Unless prohibited from so doing by this Honorable Court, the Superior Court and the Honorable Andrew D. Christie, sitting as a judge thereof, will proceed in Civil Actions 670, 671, 708, and 722, to hear and determine claims concerning rates under the Natural Gas Act, and petitioners will be required, in order fully to protect themselves, to litigate those claims in that Court.

13. Petitioners do not have any ordinary remedy, or any other remedy as of right, that is adequate to prevent

the Superior Court and the Honorable Andrew D. Christie, sitting as a judge thereof, from proceeding to hear and determine the merits of those claims or otherwise adequately and effectively to protect their rights.

14. By reason of the foregoing, petitioners are entitled to the entry of an order prohibiting the Superior Court, and the Honorable Andrew D. Christie, sitting as a judge thereof, from proceeding further in Civil Actions 670, 671, 708, and 722.

Wherefore, petitioners respectfully ask:

(a) That this Court issue an order, directed to the Superior Court of the State of Delaware in and for New Castle County, and to the Honorable Andrew D. Christie, sitting as a judge thereof, staying all further proceedings in Civil Actions 670, 671, 708, and 722, until further order of this Court herein;

[fol. 8] (b) That this Court issue a rule, directed to the Superior Court of the State of Delaware in and for New Castle County, and the Honorable Andrew D. Christie, sitting as a judge thereof, requiring them to appear before this Court and show cause, if any they have, why a writ of prohibition should not be awarded herein;

(c) That, after such hearing on its rule to show cause as may be conducted, this Court issue a writ of prohibition, directed to the Superior Court of the State of Delaware in and for New Castle County, and to the Honorable Andrew D. Christie, sitting as a judge thereof, prohibiting them from proceeding further in Civil Actions 670, 671, 708, and 722; and,

(d) That such other orders and processes issue herein, and the petitioners have such other relief, as may be appropriate and necessary in the premises.

Columbian Fuel Corporation, Texaco, Inc., Pan-American Petroleum Corporation, By: James M. Tunnell, Jr., Andrew B. Kirkpatrick, Jr., Morris, Nichols, Arsht & Tunnell, 3000 duPont Building, Wilmington, Delaware, Attorneys for Petitioners.

-Dated: November 16, 1959.

[fol. 9]

EXHIBIT TO PETITION FOR WRIT OF PROHIBITION

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

670 and 708 Civil Actions, 1958

CITIES SERVICE GAS COMPANY, A corporation, Plaintiff,

—v.—

COLUMBIAN FUEL CORPORATION, A corporation, Defendant.

671 Civil Action, 1958

CITIES SERVICE GAS COMPANY, A corporation, Plaintiff,

—v.—

THE TEXAS COMPANY, A corporation, Defendant.

OPINION—November 12, 1959

[fol. 10] On defendants' motion for summary judgment.
Denied.

John J. Morris, Jr. and Howard L. Williams (Morris, James, Hitchens & Williams) Attorneys for Plaintiff; Conrad C. Mount, O. R. Stites, Joe Rolston, Gordon J. Quilter and Robert R. McCracken, all of Oklahoma City, Oklahoma, of counsel.

James M. Tunnell, Jr. and Andrew B. Kirkpatrick, Jr. (Morris, Nichols, Arsht & Tunnell) Attorneys for Defendants; Clark, Carr & Ellis, of New York, New York, of counsel, for Columbian Fuel Corporation; Paul F. Schlicher and Alfred C. DeCrane, Jr., both of New York, New York, of counsel, for The Texas Company.

[fol. 11] CHRISTIE, J.:

FACTS

Plaintiff Cities operates pipelines through which it distributes natural gas in interstate commerce for resale to its customers. Defendant Columbian produces natural gas.*

In 1949 and 1951 plaintiff and defendant entered into gas purchase contracts providing for the purchase by the plaintiff over a long period of natural gas produced by defendants in the Hugoton Field of Kansas. The contracts specified the prices to be paid for the gas.

On December 2, 1953, the Corporation Commission of the State of Kansas promulgated a minimum gas price-fixing order covering natural gas produced from the Hugoton Field. The effect of this order was to require plaintiff to pay a price higher than the price agreed upon for the gas in the contracts between plaintiff and defendant.

Plaintiff Cities did not agree to the increased rate, but paid it in order to comply with the order and thus avoid criminal penalties for violation thereof. A letter from [fol. 12] Cities to Columbian, dated January 21, 1954, reads, in part, as follows:

"Pending final judicial determination of the said Order and beginning January 1, 1954, Cities Service Gas Company intends to pay for all gas purchased by it in the Kansas Hugoton Field in strict compliance with the terms and conditions of the said Order [the Kansas minimum price order dated December 2, 1953]. Such compliance with said Order by this Company, however, is made to avoid the penalties provided by the Kansas Statutes for a violation thereof, and the payments made to you in compliance with said Order pending its final judicial determination are to be considered and accepted by you as involuntary payments on our part, without prejudice to our rights in said litigation, and in no event as an acquiescence by us in the validity of said Order.

*The facts in Civil Action 670, 1958, against Columbian Fuel Corporation are set out because they are, in all material respects, illustrative of the facts in all three actions.

"In the event the said Order is finally judicially modified or declared to be invalid in whole or in part, as a result of which you have been overpaid for gas purchased during the interim aforesaid, Cities Service Gas Company will expect you to refund to it the amount of said overpayments."

Thereafter, upon each voucher check sent from Cities to Columbian, there was the notation that payment was made subject to the provisions of the letter dated January 21, 1954.

[fol. 13] On June 7, 1954, the United States Supreme Court held that the Federal Power Commission had authority under the Natural Gas Act to regulate sales by producers to interstate pipelines for resale. *Phillips Petroleum Co. v. Wisconsin*, 347 U.S. 672 (1954).

The Natural Gas Act enacted by Congress on June 21, 1938, had conferred upon the Federal Power Commission general jurisdiction to regulate the sale in interstate commerce of natural gas for resale. 15 U.S.C. § 717(b). After the Natural Gas Act was enacted and before the *Phillips* decision, the FPC had consistently disclaimed jurisdiction over sales by producers at the wellhead, in the belief that these sales were not sufficiently related to interstate commerce. A few days after the *Phillips* decision, on July 16, 1954, the FPC implemented the holding by promulgating FPC Order 174 (subsequently superseded by Order 174-A on August 6, 1954, and still later amended by Order 174-B, in respects not here material), requiring all independent producers such as Columbian to file as their rate schedules "the basic contract and all supplements and agreements amendatory thereof effective and applicable on and after June 7, 1954."

[fol. 14] In November, 1954, Columbian filed with the FPC the basic gas contracts here involved and supplements thereto, together with billing statements. Thus, the original contract rates were filed, along with billing statements reflecting the increased rates paid pursuant to Kansas minimum price order. On February 25, 1955, Columbian filed an addendum to its rate schedule specifically stating that the basis for charging the price shown on the billing statements was effectuation of the minimum prices established by the State of Kansas.

The FPC advised Columbian that this material had "been accepted for filing" but that such acceptance was not to be considered approval of the rate. Cities took no part in this filing process.

On January 20, 1958, the Supreme Court of the United States held that the minimum gas order of the Corporation Commission of Kansas was void on the ground that the order was in conflict with the Natural Gas Act which vests exclusive jurisdiction upon the FPC to regulate such sales of gas in interstate commerce. *Cities Service Gas Company v. Corporation Commission*, 355 U.S. 391 (1958).

[fol. 15] After the Supreme Court held the Kansas order invalid, plaintiff resumed payments for gas purchased at the contract price instead of the price specified in the Kansas order.

Plaintiff made demand on defendants for repayment of the difference between the "contract price" and the amounts actually paid for the gas pursuant to the Kansas price order together with lawful interest thereon. Defendants refused to make any refund, and Cities brought this action to recover the alleged overpayments. The total amount sought is \$888,357.58.

Defendants filed an answer raising a number of defenses and after much discovery filed a motion for summary judgment. The grounds originally stated as a basis for defendants' motion for summary judgment were as follows:

"1. During the period from January 1, 1954, to July 16, 1954, the *only* lawful price for the sales of natural gas by defendant to plaintiff, referred to in the complaint herein, was fixed by a regulation of the State of Kansas, and plaintiff does not base its claim upon that regulation;

"2. During the period after July 16, 1954, the *only* lawful price for the sales of natural gas by defendant [fol. 16] to plaintiff, referred to in the complaint herein, was fixed by a rate filed with and accepted by the Federal Power Commission, under its regulations prescribed under the Natural Gas Act, 15 U.S.C.A. §§717(a) *et seq.*, and plaintiff does not base its claim upon that filed rate; and,

"3. If the Kansas regulation, had not been in effect from January 1, 1954, to July 16, 1954, or if thereafter defendant had had no rate on file with the Federal Power Commission, the *only* lawful price for the sales of natural gas by defendant to plaintiff, referred to in the complaint herein, would have been that prescribed by the Natural Gas Act, 15 U.S.C.A. §§ 717(a), *et seq.*, and plaintiff does not base its claim upon that Act."

In the course of the briefing of the motion for summary judgment, both parties agreed that as to the period after July 16, 1954, at least no rate may be asserted as a legal right that is other than the filed rate.

Thus, it became apparent that a major issue in this case is the determination of what rate was the "filed rate" with the FPC during the period in question.

Defendants then asserted the position that this Court lacks jurisdiction to determine the "filed rate" and that it also lacks jurisdiction to determine the status of the rates prior to July 16, 1954, since under the *Phillips* decision these [fol. 17] matters come within the provisions of the Natural Gas Act and as such must be heard in a Federal Court.

It is obvious that the jurisdiction of this Court should be determined before the merits of the defendants' motion for summary judgment are considered.

This opinion addresses itself first to the jurisdictional issue and then to the merits of defendants' motion for summary judgment.

[fol. 18]

JURISDICTION

Defendants' contention that this Court lacks jurisdiction to try and determine the dispute is based on Section 22 of the Natural Gas Act which provides, in pertinent part, as follows:

"Sec. 22. The District Courts of the United States, the District Court of the United States for the District of Columbia, and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have exclusive jurisdiction of violations of this act or the rules, regulations, and orders

thereunder, and of all suits in equity and actions at law, brought to enforce any liability or duty created by, or to enjoin any violation of, this act or any rule, regulation, or order thereunder . . . " (15 U.S.C.A. § 717u)

Defendants maintain that after July 16, 1954, the only lawful price for the sales of natural gas by defendants to plaintiff was fixed by a rate filed with and accepted by the Federal Power Commission, that a determination of such rates by this Court would be a decision in actions at law brought to enforce a liability or duty created by the Act or a rule, regulation or order thereunder within the meaning of Section 22 of the Act.

[fol. 19] Defendants also point to regulation §154.21 of the Federal Power Commission which directs that no Natural Gas Company shall directly or indirectly demand, charge or collect any rate or charge . . . different from those prescribed in its effective tariff on file with the Commission.

Finally, the defendants maintain that since the whole controversy centers on what charges are required by the rates filed with the Commission under the Act, jurisdiction to determine such issue is plainly vested in the Federal Courts.

Plaintiff, on the other hand, maintains that this Court does have jurisdiction because these are common law actions in contract or for restitution, and the interpretation of the actions of the Federal Power Commission and a determination as to what constitutes the "filed rate" is not, as it is here brought before the Court, a matter over which the Federal Courts are given inclusive jurisdiction by the Natural Gas Act. Plaintiff thus maintains that the determination of a "filed rate" does not constitute the fixing of a rate.

[fol. 20] I find defendants' contention that this Court lacks jurisdiction to be without merit. The actions here asserted are based on contracts and/or restitution and not on the Natural Gas Act. See *Cities Service Gas Company v. Skelly Oil Company*, 165 F. Supp. 31 (D.C. Delaware, 1958); *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S.

667 (1950); *United Gas Pipeline Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956).

The plaintiff may not recover if its right to recover depends on a rate schedule which is contrary to the Natural Gas Act or any rule, regulation or order thereunder. But that is not to say that the action is based on a liability or duty created by such Act. Plaintiff merely asserts a cause of action which may not be inconsistent with federal law or regulation. If recovery is not to be inconsistent with federal law and regulation, such law and regulation must be closely studied and carefully interpreted in this Court. Still the action of this Court in interpreting the filings which have taken place will not constitute the setting of a rate, and a decision of this case on its merits will not involve a decision in an action at law brought to enforce any liability or duty created by the Natural Gas Act or any rule, regulation or order thereunder.

[fol. 21] The Natural Gas Act has provided for federal price regulation but it has not set up any machinery for adjudication of contract disputes of the type before this Court. These cases are not brought under the Act although an interpretation of what was done under the Act will be necessary to resolve the issues raised.

Since this Court has jurisdiction, it must pass upon the merits of defendants' motion for summary judgment. Such decision depends upon the status of the Kansas price order prior to July 16, 1954, and a determination of the rate filed with the FPC after that date.

[fol. 22] VALIDITY OF KANSAS ORDER

Defendants maintain that the Kansas minimum price order was valid until the FPC entered the field. Plaintiff argues that it is settled law that the Kansas minimum price order was void *ab initio*.

Decision on this point depends largely on an interpretation of the meaning of the United States Supreme Court decision in *Phillips Petroleum Co. v. Wisconsin*, *supra*. The problem is whether the Supreme Court there decided that federal jurisdiction was concurrent, and thus state regulation was valid until superseded by federal regulation on July 16, 1954, as defendants contend; or did it decide

that federal jurisdiction was exclusive, and thus any state regulation was invalid *ab initio*, as plaintiff contends.

The first significant case in which the question arose was *Natural Gas Pipeline Co. of America v. Panoma Corp., et al.*, 349 U.S. 44 (1955). Natural Gas Pipeline Co. agreed to purchase gas from the Panoma Corp. at a price specified in a contract between them. Soon after the contract was made, Oklahoma enacted its minimum price order fixing a price somewhat higher than that provided for in the contract. Suit was brought by Panoma to force the purchaser Pipeline Co. to comply with the Oklahoma order.

[fol. 23] The Oklahoma Supreme Court held the Oklahoma price order valid and required the purchaser Pipeline Co. to pay the difference between the contract price and the order price for previous years and to pay the order price in the future. The court specifically held that the state regulatory order did not violate the commerce clause of the U. S. Constitution. *Natural Gas Pipeline Co. of America v. Panoma Corp., et al.*, — Okla. —, 271 P.2d 354. This decision was rendered on September 15, 1953, and petitions for rehearing were denied on March 23, 1954, and on May 25, 1954. Thus, the case was decided after the passage of the Natural Gas Act, but during the period of federal disclaimer of jurisdiction over wellhead prices, and before there was any implementing federal regulation under the Act.

The *Panoma* case was appealed to the United States Supreme Court, where the Oklahoma Supreme Court decision was reversed. *Natural Gas Pipeline Co. of America v. Panoma Corp., et al.*, *supra*. The Court holds that under the *Phillips* decision, the FPC had exclusive jurisdiction over wellhead prices. Defendants point out that the U.S. Supreme Court decision was handed down on April 11, 1955, and that by then federal regulation under the Natural Gas Act had begun. Defendants argue that the initiation of federal regulation was an important factor in the reversal. [fol. 24] Defendants' argument is based on an incorrect premise. In deciding a case, a court views facts and surrounding circumstances as they were at the time of the occurrence under litigation, not as of the time the case is finally decided. Applying this principle, the *Panoma* case

dealt in part at least with the status of federal regulation as of 1953.

As before mentioned, in 1953 the Natural Gas Act lay unimplemented on the books, there being a federal disclaimer of jurisdiction over wellhead prices. This was the situation to which the U. S. Supreme Court looked when in *Panoma, supra*, it held the Oklahoma Order invalid. It thus appears that if the state regulation was invalid even in the absence of federal regulation, there never was a time when it could be valid, i.e., it was void *ab initio*. So viewed, the *Panoma* case controls the present one on this point.

The Supreme Court in *Panoma* noted a dissent by Mr. Justice Douglas in the following language:

"Mr. Justice Douglas being of the opinion that state regulation is permissible until the federal price regulation permitted by *Phillips Petroleum Company v. Wisconsin*, 347 U.S. 672, 98 L.Ed. 1035, 74 S.Ct. 794 is imposed, dissents."

It thus appears that the question whether state minimum gas price orders could stand until federal regulation was [fol. 25] imposed was considered by the Supreme Court in conference and the views of Mr. Justice Douglas were rejected.

Later, when the United States Supreme Court held the Kansas minimum price order invalid in *Cities Service Gas Co. v. State Corporation Commission*, 355 U.S. 391 (Jan. 20, 1958), the Court, in an opinion by the whole Court, simply stated:

"Per curiam: The judgment is reversed. *Phillips Petroleum Company v. Wisconsin*, 347 U.S. 672, 98 L. Ed. 1035, 74 S.Ct. 794; *Natural Gas Pipeline Co. v. Panoma Corp., et al.*, 349 U.S. 44, 99 L.Ed. 866, 75 S.Ct. 576."

The absence of a dissent by Mr. Justice Douglas on this occasion seems to indicate either that his views were still unacceptable to the majority of the court and he did not see fit to urge them further, or that he had acquiesced in the majority view. In any event, the Supreme Court fol-

lowed its reasoning in the *Panoma* case and held the Kansas regulation invalid from its inception.

The above analysis of the decisions of the United States Supreme Court appears to have been accepted in part at least in the Fifth Circuit in *Natural Gas Pipeline Co. of America v. Harrington*, 246 F.2d 915, cert. denied 356 U.S. 957 (1958); by the Third Circuit in *Natural Gas Pipeline [fol. 26] Co. of America v. Federal Power Commission*, 253 F.2d 3, cert. denied 357 U.S. 927 (1958); and by the Tenth Circuit in *Cities Service Gas Co. v. Federal Power Commission*, 255 F.2d 860, cert. denied 358 U.S. 837 (1958).

In the Fifth Circuit case, a second petition for rehearing was filed by Harrington contending that the Oklahoma Order was valid to July 16, 1954. This contention was rejected by the Court in its 253 F.2d 231 per curiam order dated March 5, 1958, wherein the Court said:

"Per. curiam: Leave to file a second petition for rehearing is denied. *Natural Gas Pipeline Co. of America v. Panoma*, 349 U.S. 44. The notation of Mr. Justice Douglas' dissent shows that the Court considered the question presented by this second petition for rehearing."

Finally, the Supreme Courts of Oklahoma and of Kansas have decided against the proposition advanced by the defendants here. The Oklahoma Supreme Court issued an order to the Oklahoma Corporation Commission on March 20, 1958, which read, in pertinent part, as follows:

"That Order No. 26096 of the corporation commission of the State of Oklahoma which is the subject of appeals to this Court and the Supreme Court of the United States be, and the same is, hereby reversed, set aside and held for naught in its entirety."

[fol. 27] The Kansas Supreme Court, in *Cities Service Gas Co. v. Corporation Commission*, 184 Kan. 540, 337 P.2d 640, cert. denied October 12, 1959, held that the Kansas minimum price order,

"invaded the jurisdiction of the Federal Power Commission and was not within the jurisdiction of the State

Corporation Commission to enter, even though the Federal Power Commission had not exercised jurisdiction in the matter."

This Court has read with care the provocative dissenting opinion of Fatzer, J., in the Kansas case. However, I regard the opinion of the majority as better reasoned and it is now the well established view.

In my opinion, the Kansas minimum price order was void *ab initio* and never legally imposed any obligation on Cities to pay a price for gas different from that expressed in the gas purchase contracts.

As to the period before July 16, 1954, the state's price regulations were void. Since there were no "filed" rates with the FPC, there was no effective governmental price regulation in this field and as between the parties, the rates specified in their contracts would govern. The argument that the only legal rate was the "filed" rate cannot find application as to the period when there was no filed rate and no one knew that rates should be filed.

[fol. 28] As to the period prior to July 16, 1954, defendants' motion for summary judgment is without merit.

[fol. 29] THE LEGAL RATE AFTER JULY 16, 1954

Both parties agree that as to the period after July 16, 1954, the only legal rate is the filed rate "and not even a court can authorize commerce in a commodity on other terms." *Montana-Dakota Utilities Co. v. Northwestern Public Service Co.*, 341 U.S. 246, 251 (1951). The question then becomes what rate was legally filed? Plaintiff claims that the rate filed was the contract rate, while defendant Columbian claims that the rate filed was the rate prescribed by the Kansas minimum price order.

The question is not accurately put when we ask what was the "filed rate" since obviously the rates advocated by each party were on file with the FPC. The question really is which of the rates filed with the FPC is the legal rate binding upon the parties before this Court.

Defendants' position is that their action in tendering rate schedules to the FPC and the action of the FPC in accepting these schedules for filing made the rate pre-

scribed by the Kansas minimum price order the legally filed rate.

The letters of acceptance written by the FPC to Columbian at the time the rates were filed tend to indicate that the FPC was of the opinion that neither the unilateral act [fol. 30] of filing by the seller (such as defendant) nor that of the Commission in accepting the rate for filing was sufficient to increase a rate over that in the original contract. Such letters contain the following qualifying provision:-

"This acceptance for filing shall not be construed as a waiver of the requirements of Section 7 of the Natural Gas Act, as amended; nor shall it be construed as constituting approval of any rate, charge, classification, or any rule, regulation or practice affecting such rate or service contained in the rate filing; nor shall such acceptance be deemed as recognition of any claimed contractual right or obligation associated therewith; and such acceptance is without prejudice to any findings or orders which have been made or may hereafter be made by the commission in any proceedings now pending or hereafter instituted by or against your company."

That a change in rate cannot be brought about by unilateral action was clearly established by the Supreme Court in *United Gas Pipeline Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956). The Supreme Court there explained that the original contract rate is not changed by unilateral action unless and until it is changed in a proceeding under Section 4(a) and (c) or Section 5(2) of the Act, requiring notice to the parties and an opportunity to be heard.

[fol. 31] Since the Kansas minimum price order was void, the filing of rates involuntarily paid thereunder was no more effective than was the filing in the above cited case. See also *Cities Service Gas Co. v. Federal Power Commission*, *supra*.

Defendants' contention that the filing of the rates paid under protest on account of the Kansas order made such rates the legal rate under the Natural Gas Act is without merit.

Defendants next attempt to establish that the rates required by the Kansas order were the contract rates because under a clause in the original gas purchase contract, the contract price can be changed at any time by an order such as that issued by the Kansas Commission. The clause reads:

"This Agreement is subject to all present and future laws and valid orders, rules and regulations of any regulatory body having jurisdiction."

According to defendants, the Kansas order was in effect until federal regulation began on July 16, 1954, and determined prices up to that time.

[fol. 32] The clause clearly states that the agreement is subject to any subsequent "valid order". This Court has already determined that the Kansas order was void *ab initio* and thus the clause can have no application here.

Since the Kansas order is a nullity and the filing of rates required thereunder did not change the rate set up in the original contract or establish a new legal rate, what then is the rate on file with the FPC, and thus the legal rate for the period prior to July 16, 1954?

The Federal Power Commission's position on this matter, as stated in its brief to the Circuit Court in *Cities Service Gas Co. v. Federal Power Commission*, 255 F.2d 860, cert. denied 358 U.S. 837 (1958), was that:

"Since the Kansas order has been declared invalid on the date of filing, it was never a part of the filed rate, and Cities Service is not barred by the filed 11¢ rate from recovering any payments made by it in excess of the contract price."

and further that the:

"rate as we have seen is the 6¢ contract rate in view of the invalidity of the Kansas order, not the 11¢ rate reflected in the billing statements."

The Circuit Court accepted the FPC position and in the *Cities Service* case, *supra*, held:

[fol. 33] "When the United States Supreme Court struck down the Kansas order there was no longer

a valid order which could modify the contract rate and the contract rate was the rate effective . . . ”

to the same effect is the decision of the Fifth Circuit in *Natural Gas Pipeline Co. of America v. Harrington*, *supra*, and of the Third Circuit in *Natural Gas Pipeline Co. of America v. Federal Power Commission*, *supra*.

The Court holds, as a matter of law, that implicit in the acceptance by the Commission of the Kansas minimum price order was the validity of that order. If said order were valid, the rate prescribed therein would indeed constitute the filed rate of defendants with the Federal Power Commission. However, since the Kansas order was void, the only lawful filed rate is the contract rate, unaffected by the Kansas order.

Defendants' motion for summary judgment is denied.

[fol. 34]

IN THE SUPREME COURT OF THE STATE OF DELAWARE

[Title omitted]

AFFIDAVIT OF JAMES M. TUNNELL, JR.

State of Delaware,
County of New Castle, ss:

Be It Remembered that on this 16th day of November, 1959, personally appeared before me, the subscriber, a Notary Public for the State and County aforesaid, James M. Tunnell, Jr., who being by me first duly sworn according to law did depose and say that he is a member of the Bar of the State of Delaware; that he is attorney for Columbian Fuel Corporation, the defendant in Civil Actions 670 and 708 in the Superior Court of the State of Delaware in and for New Castle County, for Texaco, Inc. (formerly "The Texas Company"), the defendant in Civil Action 671 in the Superior Court of the State of Delaware in and for New Castle County, and for Pan American Petroleum Corporation, the defendant in Civil Action 722 in the Superior Court of the State of Delaware in and for New Castle County, and is attorney for those corporations herein; that what is stated in paragraphs 1 through 10 of the [fol. 35] attached petition is true; and that what is stated

in paragraphs 11 through 14 of the attached petition he believes to be true.

James M. Tunnell, Jr.

Sworn to and Subscribed before me the day and year aforesaid.

Evelyn P. Cashell, Notary Public.

[Notarial Seal]

[fol. 36] Acknowledgment of service (omitted in printing)

[fol. 37]

IN THE SUPREME COURT OF THE STATE OF DELAWARE

No. 69, 1959

[Title omitted]

ORDER UPON PETITION FOR WRIT OF PROHIBITION—
November 17, 1959

Now, this 17th day of November, 1959, the petition herein for a writ of prohibition having been presented in chambers, with counsel for plaintiff in Civil Actions 670, 671, 708, and 722, 1958, in the Superior Court of the State of Delaware in and for New Castle County in attendance,

It Is Hereby Ordered:

1. That a rule of this Court is awarded, to be directed to the respondents, the Superior Court of the State of Delaware in and for New Castle County and the Honorable Andrew D. Christie, sitting as a judge of that Court, requiring them to appear before this Court at a Special session thereof which shall be held on January 25th, 1960, at 10:30 A.M., at Dover, Delaware, to show cause, if any there be, why the writ of prohibition should not be issued as prayed for herein;

[fol. 38] 2. That the respondents herein may file an answer, answering affidavits, or any other defense to that rule by way of motion or otherwise, on or before November 27th, 1959, and petitioners may file affidavits in rebuttal on or before December 10th, 1959;

3. That petitioners shall file their brief in support of their petition on or before December 14th, 1959, respondents and any intervening parties, if any there shall be, may file briefs in opposition to the petition on or before January 6th, 1960, and petitioners may file a reply brief on or before January 20th, 1960;

4. That the rule herein, together with a copy of the petition and this order, shall be served forthwith by the Sheriff of Kent County, by leaving with the Prothonotary of the Superior Court of the State of Delaware in and for New Castle County, with the Honorable Andrew D. Christie sitting as a judge of that Court, and with Howard L. Williams, Esquire, attorney for plaintiff in Civil Actions 670, 671, 708, and 722, 1958, in that Court, a copy of said rule, petition and order, certified by the clerk of this Court to be a true and correct copy thereof; except that such service need not be made by the Sheriff of Kent County on those persons who, prior to formal service, shall have acknowledged the receipt of said rule, petition and order, certified as aforesaid; and that the Sheriff of Kent County shall make return to this Court of his proceedings hereunder on the return day of said rule;

5. That the Prothonotary of the Superior Court of the State of Delaware in and for New Castle County shall forthwith transmit to the clerk of this Court the original records in Civil Actions 670, 671, 708, and 722, 1958, in that Court; [fol. 39] that said Prothonotary shall append thereto his certificate or certificates identifying such records with reasonable definiteness; and that said Prothonotary shall transmit therewith a copy, certified by him, of the docket entries in those actions and a statement of the cost of making up and certifying the record; and,

6. That all further proceedings in the Superior Court of the State of Delaware in and for New Castle County in Civil Actions 670, 671, 708, and 722, 1958, shall be, and they hereby are, stayed until the further order of this Court; ~~but said stay shall automatically terminate on November~~
~~1959, at~~ ~~M., as to those Civil Actions~~
~~in which the defendant therein, which is a petitioner here-~~
~~in, shall fail, on or before that date, to file with the clerk~~

~~of this Court a surety bond, with or without the petitioner joining therein, to be approved by one of the Justices of this Court, in the sum of _____ Dollars (\$ _____), and each said surety bond shall be conditioned so that, if the petitioner shall appear in this Court and prosecute its petition to effect or, if it should fail to make its petition good, shall indemnify the plaintiff against loss, damage, or injury as a result of such stay in that Civil Action or actions in which the petitioner is a defendant and shall pay its share of the costs of this proceeding in this Court, then said obligation shall be void, otherwise to be and remain in full force and virtue.~~

7. Leave is hereby granted to Cities Service Gas Company, plaintiff below, to appear in this cause as Intervening Respondent.

Daniel F. Wolcott, Justice.

[fol. 40]

IN THE SUPREME COURT OF THE STATE OF DELAWARE

No. 69 1959.

COLUMBIAN FUEL CORPORATION, a Delaware corporation;
TEXACO, INC. a Delaware corporation; and PAN AMERICAN PETROLEUM CORPORATION, a Delaware Corporation,
Petitioners,

v.

THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR
NEW CASTLE COUNTY, and the HONORABLE ANDREW D.
CHRISTIE, sitting as a Judge of that Court, Respondents,

CITIES SERVICE GAS COMPANY, a Delaware corporation,
Intervening Respondent.

ANSWER OF INTERVENING RESPONDENT CITIES SERVICE GAS
COMPANY TO RULE TO SHOW CAUSE—Filed November 27,
1959

Comes Now Cities Service Gas Company (Cities), intervening respondent in the above causes, and for answer to

the Rule to Show Cause awarded herein by this Court on November 17, 1959, respectfully alleges and states:

1. Cities admits each and every allegation contained in paragraphs numbered 1 and 2 and the first grammatical paragraph of paragraph numbered 3 of petitioners' Petition for Writ of Prohibition in said causes.

2. Cities admits that the various pleadings, motions, briefs, and other documents referred to in paragraphs numbered 3 through 10 of said petition were filed and constitute a part of the record in the above causes, but states that said instruments speak for themselves and, accordingly, Cities denies any conclusions drawn therefrom by [fol. 41] petitioners in said paragraphs numbered 3 to 11, inclusive.

3. Cities denies each and every allegation contained in paragraphs numbered 11 and 12 of said petition. Cities alleges and states that, on the contrary, the Superior Court of New Castle County, State of Delaware, has jurisdiction over the parties and the subject matter of the above causes; that said causes of actions are between citizens of Delaware for the recovery of money based on contracts and/or restitution, as shown by the following facts of record:

(a) In 1949 and 1951 Cities and petitioners entered into Gas Purchase Contracts providing for the purchase by Cities of natural gas produced by petitioners from the Hugoton Field of Kansas. The Gas Purchase Contracts specified the prices to be paid for gas so produced.

(b) On December 2, 1953, the Corporation Commission of the State of Kansas promulgated a minimum gas price-fixing Order, effective January 1, 1954, covering natural gas produced from said Hugoton Field of Kansas. The effect of this Order was to require Cities to pay petitioners a price higher than the price agreed upon for the gas in the Gas Purchase Contracts between Cities and petitioners.

(c) Cities did not agree to the increased price but paid it involuntarily, under business compulsion and under compulsion of said Order, in order to comply with the Order and thus avoid criminal penalties for violation thereof.

After said Order was issued and before any payments were made thereunder, Cities addressed a letter dated January 21, 1954, to petitioners, which letter reads as follows:

[fol. 42] "The State Corporation Commission of the State of Kansas, by Order dated December 2, 1953, in Docket No. 44,079-C(C-3216) directed that on and after January 1, 1954, as a condition precedent for withdrawal of gas from the Hugoton Gas Field in Kansas, there shall be paid therefor or attributed thereto, at the wellhead, a minimum price of not less than eleven cents (11¢) per M.c.f. (14.65 pounds p.s.i.a.).

"Cities Service Gas Company and certain other parties filed Petitions in the District Court of Finney County, Kansas, for a judicial review of the said Order.

"Pending final judicial determination of the said Order and beginning January 1, 1954, Cities Service Gas Company intends to pay for all gas purchased by it in the Kansas Hugoton Field in strict compliance with the terms and conditions of the said Order. Such compliance with said Order by this Company, however, is made to avoid the penalties provided by the Kansas Statutes for a violation thereof, and the payments made to you in compliance with said Order pending its final judicial determination are to be considered and accepted by you as involuntary payments on our part, without prejudice to our rights in said litigation, and in no event as an acquiescence by us in the validity of said Order.

"In the event the said Order is finally judicially modified or declared to be invalid in whole or in part, as a result of which you have been overpaid for gas purchased during the interim aforesaid, Cities Service Gas Company will expect you to refund to it the amount of said overpayments."

Each and every voucher check transmitted from Cities to petitioners in payment for gas purchased during the period involved in the respective causes of action herein,

contained a notation thereon that payment was made subject to the provisions of said letter dated January 21, 1954. Petitioners received said letter of January 21, 1954, and the voucher check tendering payment on the conditions set out in said letter of January 21, 1954. Petitioners likewise cashed each such voucher check so tendered and retained the proceeds thereof without any objection to the terms on which they were tendered.

(d) On January 20, 1958, the Supreme Court of the United States held, in the litigation referred to in said letter of January 21, 1954, that the minimum gas price-fixing [fol. 43] Order of the Corporation Commission of Kansas was void; *Cities Service Gas Co. v. Corp. Comm.*, 355 U.S. 391 (1958). Thereafter the Kansas Supreme Court in construing the mandate of the Supreme Court of the United States in the case last above referred to held that the Kansas price-fixing Order was void ab initio for lack of jurisdiction of the Kansas Corporation Commission to issue the same; *Cities Service Gas Company v. Kansas Corp. Comm.*, 184 Kan. 540, 337 P.2d 640, and on October 12, 1959, the Supreme Court of the United States denied a review of said determination of the Kansas Supreme Court; *Cities Service Gas Company v. Kansas Corp. Commission*, — U.S. —.

(e) Cities thereupon resumed payments for gas purchased from petitioners at the contract price instead of the state-ordered minimum price and made demand upon petitioners for repayment of the difference between the contract price set forth in the respective Gas Purchase Contracts and the amounts actually paid for gas at the rate prescribed in the void Kansas Price Order, together with lawful interest thereon. Petitioners refused to make any refund and Cities brought these actions to recover such overpayments.

4. Cities respectfully submits that it is patent from the facts set forth above and set out in Cities' Complaints herein that Cities' causes of action rest upon well recognized common law principles applicable to contracts and/or restitution. As shown by Cities' Complaints herein, Cities'

causes of action are based exclusively upon contract, or alternatively, upon restitution. The theory of Cities' case as set forth in said Complaints is that payments to petitioners pursuant to the letter of January 21, 1954, and the receipt and retention of such payments, subject to the provisions of said letter, constitute a contract by petitioners to refund the overpayments herein sought to be recovered. Alternatively, as particularly set forth in said Complaints, [fol. 44] Cities seeks restitution based upon overpayments paid to petitioners involuntarily under business compulsion and under compulsion of the void Kansas minimum price Order to comply with said Order and thus avoid the criminal penalties imposed by law for violation thereof. No reference is made anywhere in said Complaints to the Natural Gas Act or to any Order, rule or regulation of the Federal Power Commission thereunder, nor does Cities rely on any violation of said Act by petitioners.

5. Cities specifically denies that its causes of action herein are for "violations of this Act" [Natural Gas Act] or the "rules, regulations and orders thereunder," or that said causes are "suits in equity and actions at law brought to enforce any liability or duty created by or to enjoin any violation of this Act or any rule, regulation or order thereunder."

6. Cities hereby specifically incorporates herein, by reference, the Complaints of Cities filed in the above causes herein, as well as the Opinion of the Superior Court of New Castle County, State of Delaware, and specifically relies upon said Complaints and Opinion.

Wherefore, Cities Service Gas Company, respectfully prays that a Writ of Prohibition herein be denied.

Cities Service Gas Company, By Howard L. Williams, Henry N. Herndon, Jr.

Morris, James, Hitchens & Williams, 701 Bank of Delaware Building, Wilmington, Delaware, Attorneys for Intervening Respondent.

Of Counsel, Conrad C. Mount, Robert R. McCracken, Charles V. Wheeler, First National Building, Oklahoma City 1, Oklahoma.

[fol. 45] [File endorsement omitted]

Acknowledgment of service (omitted in printing).

[fol. 45a] [File endorsement omitted]

[fol. 46]

IN THE SUPREME COURT OF THE STATE OF DELAWARE

No. 69, 1959.

COLUMBIAN FUEL CORPORATION, a Delaware corporation,
TEXACO, INC., a Delaware corporation, and PAN AMERICAN PETROLEUM CORPORATION, a Delaware corporation,
Petitioners,

v.

THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR
NEW CASTLE COUNTY, and the HONORABLE ANDREW D.
CHRISTIE, sitting as a Judge of that Court, Respondents,

and

CITIES SERVICE GAS COMPANY, a Delaware corporation,
Intervening Respondent.

PETITIONERS' MAIN BRIEF IN SUPPORT OF THEIR PETITION
FOR A WRIT OF PROHIBITION—Filed December 14, 1959

[fol. 47] C. Proceedings in the Superior Court in Civil
Actions 670, 671, 708 and 722.

[fol. 48] When the Superior Court rendered an opinion
on what the filed rates were, it therefore ruled upon a
question which defendants thought was not before the
Court and on which these defendants had not been heard.
We think the question of what the filed rates were is no

more before this Court than it was before the Superior Court on defendants' motions.

We submit that the sole question that is before this Court and was before the Superior Court on defendants' motions is this:

Assuming defendants' filed rates are as the plaintiff claims identical with what it claims are the contract prices, do the courts of this state, or any state, have jurisdiction to entertain a claim based upon the contract prices?

This question very obviously does not reach the dispute between plaintiff and the defendants of whether the filed rates are what the plaintiff claims or what the defendants claim.

[fol. 49] D. No Authority Supports the Superior Court's Decision That It Has Jurisdiction of a Suit Asserting Liability for Deviation From the Filed Rate.

[fol. 50] If plaintiff had rested its cases against these defendants upon common law bases and ignored the Act and filed rates, as it did in *Skelly*, we would certainly agree that there would have been no jurisdiction in the federal courts. But after it had defeated removal in *Skelly*, Cities in the suits here involved commenced to rely upon filed rates and proceeded with argument as to what they [fol. 51] were. And, in fact, the Superior Court found that plaintiff could proceed only on this basis. It is these developments, not present in *Skelly*, which here present the jurisdictional infirmity.²⁵

²⁵ Actually, if a state court does not itself have jurisdiction because that of the federal courts is exclusive, then a federal court cannot acquire jurisdiction by removal even though it would, of course, have jurisdiction of a suit originally instituted before it. *Lambert Run Coal Company v. B. & O. R. R.*, 258 U. S. 374 (1922); *Southern Pacific Co. v. City of Willow Glen*, 49 F. 2d 1005 (9th Cir. 1931); and, *Jewell v. Cleveland Wrecking Co.*, 28 F. Supp. 364, 366 (Mo. 1938) ("A removal proceeding acknowledges the jurisdiction of the state court").

[fol. 51a] [File endorsement omitted]

[fol. 52]

IN THE SUPREME COURT OF THE STATE OF DELAWARE

No. 69, 1959

COLUMBIAN FUEL CORPORATION, a Delaware corporation,
TEXACO, INC., a Delaware corporation, and PAN AMER-
ICAN PETROLEUM CORPORATION, a Delaware corporation,
Petitioners,

v.

THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR
NEW CASTLE COUNTY, and the HONORABLE ANDREW D.
CHRISTIE, sitting as a Judge of that Court, Respondents,

and

CITIES SERVICE GAS COMPANY, a Delaware corporation,
Intervening Respondent.

Reply Brief of Petitioner, Pan American Petroleum Cor-
poration, in Support of the Petition for a Writ of
Prohibition and in Opposition to the Briefs of the In-
tervening Respondent and the Amicus Curiae—Filed
January 21, 1960

[fol. 53] Statement of Facts

On page 7 of its brief Cities states that the contract upon
which it is suing consists of the letter of January 21, 1954,
set forth on pages 4 and 5 thereof, and the receipt and
retention of payments allegedly made subject to the letter.
[fol. 54] In this connection Cities fails to state that its
letter of January 21, 1954, to Pan American has never been
filed with the Federal Power Commission as part of the
rate schedule applicable under the Natural Gas Act to the

sale of gas in issue. Cities also fails to state that none of the "voucher checks" referred to on pages 5 and 6 of its brief has ever been filed with the Federal Power Commission as part of Pan American's rate schedule. An examination of Pan American's rate schedule certified to December 5, 1958, attached as Exhibit "3" to Cities' Motion for Summary Judgment in C. A. 722, will verify these statements.

What Cities has failed to disclose is that it has brought an action against Pan American on an alleged contract which is not a part of the rate schedule on file with the Federal Power Commission. It has also failed to disclose that, with respect to deliveries of gas from June 7, 1954, to June 30, 1957, incl., the rate schedule, which the Federal Power Commission had made effective and applicable to said sale, consisted, insofar as the issues involved here are concerned, of the Gas Purchase Contract of June 23, 1950, (Exhibit "A" to Compl:) and the Kansas minimum price order, (Supplement No. 77 to FPC Rate Schedule 84 as shown in Exhibit "3" above). With respect to deliveries of gas from July 1, 1957, to date, Exhibit "3" also shows that the rate schedule consisted essentially of the contract of June 23, 1950, the Kansas minimum price order and an unprotested and unsuspended change in rate from 11¢ to 11.0715¢ per Mcf at 14.65 psia, (Supplement No. 80 to Rate Schedule 84 as shown in Exhibit "3" above).

.

[fol. 54a] [File endorsement omitted]

[fol. 55]

IN THE SUPREME COURT OF THE STATE OF DELAWARE

No. 69, 1959.

COLUMBIAN FUEL CORPORATION, a Delaware corporation,
TEXACO, INC., a Delaware corporation, and PAN AMER-
ICAN PETROLEUM CORPORATION, a Delaware corporation,
Petitioners,

v.

THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR
NEW CASTLE COUNTY, and THE HONORABLE ANDREW D.
CHRISTIE, sitting as a Judge of that Court, Respondents,

and

CITIES SERVICE GAS COMPANY, a Delaware corporation,
Intervening Respondent.

OPINION—February 25, 1960.

Southerland, C.J., and Wolcott and Bramhall, JJ., sit-
ting.

Petition for writ of prohibition to the Superior Court of
New Castle County. Petition denied.

James M. Tunnell, Jr. of Morris, Nichols, Arsht & Tun-
nell, of Wilmington, Attorney for Petitioners:

Clark, Carr & Ellis, of New York City, for Petitioner
Columbian Fuel Corporation; Paul F. Schlicher and Alfred
[fol. 56] C. De Crane, Jr., of New York City, for Petitioner
Texaco, Inc.; W. W. Heard of Tulsa, Oklahoma, for Peti-
tioner Pan American Petroleum Corporation.

Howard L. Williams of Morris, James, Hitchens & Wil-
liams, of Wilmington, and C. C. Mount, of Oklahoma City,
and Jack Werner, of Washington, D.C., for Intervening
Respondent Cities Service Gas Company.

Edmund D. Lyons of Morris, James, Hitchens & Williams, of Wilmington, and John T. Grant, of Omaha, Nebraska, for Northern Natural Gas Company, Amicus Curiae.

Southerland, C.J.:

The petition attacks the jurisdiction of the court below to entertain four actions at law brought by Cities Service Company against three defendants, the petitioners above named. In these actions Cities seeks to recover from defendants large sums of money representing part of the payments made by Cities to defendants for natural gas between January 1, 1954 and late 1957.

The factual background of the claims is as follows:

Cities is a natural gas pipeline company. It transports natural gas from Hugoton Field in Kansas, in interstate commerce, to local distributing companies. Defendants are producers of natural gas from that field.

In 1949, 1950 and 1951 Cities and the defendants entered into contracts for the sale of gas by defendants to Cities at prices less than eleven cents a thousand cubic feet, [fol. 57] measured on a pressure base of 14.65 pounds per square inch absolute. Since the execution of these contracts defendants have supplied Cities with gas from the Hugoton Field.

Prior to the execution of these contracts Congress had adopted the Natural Gas Act. Act of June 21, 1938, 15 U.S. C.A. §717. The Federal Power Commission was empowered to regulate the sale in interstate commerce of natural gas for resale. Because of an exemption in the act the Federal Power Commission thereafter disclaimed jurisdiction over sales by producers, such as defendants.

On December 2, 1953, the Corporation Commission of the State of Kansas promulgated an order, effective January 1, 1954, fixing a minimum price of not less than 11¢ per M.c.f., measured on a pressure base of 14.65 p.s.i.a., to be paid for natural gas produced by defendants from the Hugoton Field. Cities and others filed suit in the Kansas courts for a judicial review of the order.

On January 21, 1954, Cities wrote a letter to each of the defendants with respect to the Kansas Commission order.

After stating that Cities had filed suit to obtain judicial review of the order, Cities notified the defendants that it intended to pay for gas purchased from the Hugoton Field in strict compliance with the terms of the order; that such compliance was made to avoid the penalties provided by the Kansas statutes for violation; and that payments to the defendants "are to be considered and accepted by you as involuntary payments on our part, without prejudice to our rights in said litigation * * *". Cities added:

[fol. 58] "In the event the said Order is judicially modified or declared to be invalid in whole or in part, as a result of which you have been overpaid for gas purchased during the interim aforesaid, Cities Service Gas Company will expect you to refund to it the amount of said overpayments."

Each voucher check sent to each of the defendants in payment of gas purchased during the period involved in these suits contained a notation that payment was made subject to the provisions of the letter of January 21, 1954. Each defendant accepted its checks and cashed them, and made no objection to the conditions on which they were tendered.

For the sake of convenience we shall refer to these documents as "the refund contracts", recognizing that the defendants do not concede their legal effect.

On June 7, 1954, the Supreme Court of the United States, reversing a decision of the Federal Power Commission, held that rates of "all wholesales of natural gas in interstate commerce," including rates of producers, were subject to the Commission's jurisdiction. *Phillips Petroleum Co. v. Wisconsin*, 347 U.S. 672, 74 S.Ct. 794.

The Natural Gas Act requires natural gas companies to file rate schedules with the FPC, under such regulations as the Commission may prescribe. §717e(c).

On July 16, 1954, the Commission issued order No. 174, later replacing it or supplementing it with orders No. 174-A [fol. 59] and No. 174-B. These orders dealt with the regulation of "independent producers" under the Natural Gas Act. These producers were required to apply for certifi-

rates of public convenience and necessity, and were directed to file with the Commission "rate schedules as defined in Section 154.93 hereof, setting forth the terms and conditions of service and all rates and charges for such transportation or sale effective on June 7, 1954." By §154.93 a rate schedule was defined as "the basic contract and all supplements or agreements amendatory thereof, effective and applicable on and after June 7, 1954."

Defendants duly filed the application and documents required. These documents included copies of the contracts with Cities, copies of the Kansas Price Order, and statements showing that the price to Cities on June 7, 1954, was 11¢ per M.c.f. at the specified pressure.

As these documents were filed, the Commission duly convened and voted to accept them for filing. The Commission so notified each defendant that its schedules had been accepted without constituting the acceptance as approval of any rate or charges, and without prejudice to any orders of the Commission that might affect the company so filing.

In 1956 the Supreme Court of Kansas sustained the validity of the Kansas Corporation Commission's order of December 2, 1953 (180 Kans. 454, 304 P.2d 528), but on [fol. 60] appeal the Supreme Court of the United States on January 20, 1958, reversed (355 U.S. 391, 78 S.Ct. 381), citing the *Phillips* decision and the decision in *Natural Gas Pipe Line Co. v. Panoma Corporation* (1955), 349 U.S. 44, 75 S.Ct. 578.

In the *Panoma* case the Supreme Court had held in 1955 that a similar price fixing order of the Oklahoma Corporation was void. From the dissenting opinion of Mr. Justice Douglas, it seems clear that the order was held void *ab initio*.

Applying these decisions the Supreme Court of Kansas on April 11, 1959, held that the Kansas Commission's order was void *ab initio*. 184 Kan. 540, 337 P.2d 640.

In 1958 Cities filed the four suits which are now before us. The complaints are substantially the same. They set forth the original gas contracts between the parties; the facts concerning the issuance of the Kansas price-fixing order; the refund contracts; the increased prices for gas

effected by the Kansas order; and the invalidation of that order by the Supreme Court of the United States.

By reason of these facts, it is alleged that defendants agreed in writing to refund plaintiff the over-payments; that such payments were made under compulsion; that defendants are justly indebted to plaintiff in the amount of such over-payments; and that to permit defendants to retain such over-payments would constitute unjust enrichment.

The answers deny the legal effect of the refund contracts [fol. 61] and deny that the payments were made involuntarily. The answers further set forth the facts with respect to the assumption of jurisdiction over defendants' rates of the Federal Power Commission and the filing of defendants' rate schedules, and their acceptance by the Commission. The answers further allege that the filed rate has never been decreased; that the exclusive means authorized by the Natural Gas Act and the rules of the Commission have never been utilized to contest or challenge the rate schedules; and that the rate schedules have at all times remained the legally effective rate for the sales of gas by defendants to Cities.

Subsequently the parties supplemented the record by discovery proceedings and by affidavit, and the defendants moved for summary judgment. The grounds for the motion were that the only lawful price for the sales of natural gas during the period prior to July 16, 1954, was that fixed by the Kansas order; and that during the period after July 16, 1954, the only lawful price was that fixed by the rate filed and accepted by the Commission.

Defendants' contention in support of this motion was stated in the alternative: If Cities was seeking to recover payments in excess of the contract price, it had no case, since the only lawful price for gas sold by them during the periods in question was fixed by the Kansas price order and by the rate schedules filed by the Commission. If, on [fol. 62] the other hand, the Natural Gas Act excluded the Kansas order, then Cities was seeking to recover payments allegedly in excess of natural gas rates, in which event jurisdiction to determine the claims was vested exclusively

in the federal courts by the express provisions of the Natural Gas Act.

The trial court held that the actions were suits founded on the contracts to refund excessive payments, and not on the Natural Gas Act. Agreeing with the defendants that the only legal rate is the filed rate, it held that the contract action could be maintained if it is not inconsistent with federal law or regulation. It further held that as a matter of law the only lawful filed rate is the contract rate—a ruling that the defendants assail as unnecessary because they had not tendered such an issue.

Defendants bring these rulings before us by way of a petition for a writ of prohibition.

Basic to defendants' case (in whatever form developed) is the question of jurisdiction. Has a state court jurisdiction to entertain the actions?

Section 22 of the Natural Gas Act (15 U.S.C.A. §717u) provides in part:

"The district Courts of the United States, the District Court of the United States for the District of Columbia, and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have exclusive jurisdiction of violations of this act or the rules, regulations, and orders [fol. 63] thereunder, and of all suits in equity and actions at law, brought to enforce any liability or duty created by, or to enjoin any violation of, this act or any rule, regulation, or order thereunder."

Does Cities seek to enforce a "liability or duty created by" the Act? In form, at least, its action is clearly one based on the refund contracts—not upon the contracts filed with the Commission, but upon the refund contracts by which the defendants agreed to make restitution.

But the defendants insist that, whatever the form of these actions, they are in effect actions for charges allegedly in excess of a filed rate, and therefore seek to enforce a liability created by the Act. Defendants do not point to any provision of the Act specifically authorizing suits to recover overpayments of gas rates, such as found in the Interstate Commerce Act. Their argument runs as follows:

The filed rate, defendants say, is the only lawful rate; by federal law no deviation from it is permitted; if more or less than the filed rate is paid, such payment is a violation of federal law, and a suit to redress the wrong may be brought only in the federal courts. Hence (defendants seem to say) the refund contracts have no validity in themselves as a ground for a common law action in the state courts; any rights that Cities may have in its present situation flow from the rate provisions of the Natural Gas Act.

This leads to the question: To what extent does the [fol. 64] Act impair the validity of private contracts relating to gas rates?

It is authoritatively settled that the Natural Gas Act, unlike the Interstate Commerce Act, does not abrogate private rate contracts as such. *United Gas Pipe Line Company v. Mobile Gas Service Corp.*, 350 U.S. 332, 76 S.Ct. 373. In that case the gas contract between United and Mobile had been duly filed with the FPC. Later Mobile attempted to change the rate fixed in the contract by filing a new rate schedule. The Commission accepted it, holding that it would become effective unless after investigation the Commission should determine it to be unlawful. The Supreme Court held that the rate could not be so changed by unilateral action. The Court said:

"In construing the Act, we should bear in mind that it evinces no purpose to abrogate private rate contracts as such. To the contrary, by requiring contracts to be filed with the Commission, the Act expressly recognizes that rates to particular customers may be set by individual contracts. In this respect, the Act is in marked contrast to the Interstate Commerce Act, which in effect precludes private rate agreements by its requirement that the rates to all shippers be uniform, a requirement which made unnecessary any provision for filing contracts."

Referring to the provisions of Sections 4 and 5 of the Act, relating to changes in rates and to the regulatory powers of the Commission, the Court also said:

[fol. 65] "These sections are simply parts of a single statutory scheme under which all rates are established initially by the natural gas companies, by contract or otherwise, and all rates are subject to being modified by the Commission upon a finding that they are unlawful. The Act merely defines the review powers of the Commission and imposes such duties on natural gas companies as are necessary to effectuate those powers; it purports neither to grant nor to define the initial rate-setting powers of natural gas companies."

In the cases at bar the gas purchase contracts were duly filed, along with the Kansas price-fixing order. Cities never agreed to the increased rate set by that order, so that the filing of the order by the defendants was not an agreed change in the rate.

Moreover, it has been authoritatively settled that the Kansas order was void *ab initio*, as above set forth. And the federal courts have also held that the effect of that holding was to leave the contract rate as the only lawful rate. In *Natural Gas Pipeline Company v. Federal Power Commission*, (3rd CCA) 253 F.2d 7, the distributor assailed an order of the FPC directing the filing of an increased rate based on a price-fixing order of the Oklahoma Corporation Commission, later held invalid by the Supreme Court. In reviewing the Commission's order the Third Circuit Court of Appeals said:

"The contract rate could only be changed, then, (unless the parties consented) after a hearing by the Commission as to its lawfulness unless, as set out in [fol. 66] the agreement itself, a valid law and lawful orders of regulatory bodies having jurisdiction over the parties affected it. It was expressly because of these elements that Natural, after the Oklahoma Commission had established a minimum rate and while its lawfulness was being litigated, paid the state-fixed purchase price under protest. When the United States Supreme Court found Oklahoma's action to have been unlawful and set the state commission order aside, there was no longer even the semblance of a valid law, or lawful order which would modify the contract rate.

The contract rate, therefore, under the mandate of the Supreme Court must be held to have been the rate effective on June 7, 1954."

A similar holding is found in *Cities Service Gas Co. v. Federal Power Commission* (10th CCA), 255 F.2d 860.

If under the Natural Gas Act a gas producer and a distributor may agree to fix the rate, and from time to time to change it, absent any proceeding before the Commission to regulate the rate, why may they not agree that the rate to be paid shall be the contract rate if the rate imposed by a State Commission shall be held invalid? This, in effect, was what the parties here agreed upon.

If so, it seems to us that the claims here are not founded upon any liability created by the Natural Gas Act, but upon a private contract deriving its force from state law.

It is certainly true that the adjudication of these claims does entail an examination of the provisions of the Natural Gas Act, the regulations of the Commission, and the applicable federal decisions. But these have been brought into [fol. 67] the cases by way of defense to complaints which, on their face, are based on nothing more than contracts to refund amounts measured by the contract or "filed" rate and the rate fixed by the Kansas order. The general rule is that in such a case the plaintiff's suit is not one arising under federal law. *Skelly Oil Co. v. Phillips Petroleum Co.*, 70 S.Ct. 876. Cases involving patents supply familiar examples of this principle. See annotation in 167 ALR p. 1114.

There is no issue here of the reasonableness of the rate, nor any attempt to "adjudicate" a proper rate, as the defendants argue.

We are not cited to any decision of the Supreme Court of the United States authoritatively settling the question before us. There are, however, three decisions of the federal district courts involving suits brought in the state courts to recover excess payments of gas rates made under circumstances similar to those in the cases at bar. In each case the defendants attempted to remove the case to the federal court. In *Cities Service Gas Co. v. Skelly Oil Co.*, (D.C.Del. 1958), 165 F.Supp. 31, Judge Layton held that

the suit was not one founded upon the Natural Gas Act, but a contract action based upon letters interchanged by the parties. He added:

"Now, it is conceded that in order to determine the exact amounts due, as well as other relevant questions, a construction of the Natural Gas Act and of the Commission Rules may have to be resorted to. But as [fol. 68] said in the Winsor case, 'Nor, . . . is the fact that a federal law may or will be drawn into construction during the course of the litigation sufficient to suppose jurisdiction in a federal court.'"

To the same effect is *Northern Natural Gas Co. v. Cities Service Oil Co.*, decided by the United States District Court of Iowa, June 30, 1959, and *Pan American Petroleum Corporation v. Cities Service Gas Co.*, decided by the District Court of Kansas. (Both opinions are unreported.) In the latter case, as in these cases, the Kansas Corporation Commission price-order had been filed with the Commission. The Court, citing the decision of the Supreme Court respecting the effect of private contracts fixing initial rates, noted that the Commission had taken no action to change the contract rate. The court also held that the Kansas Commission had no power to modify the terms of the original agreement, and further said:

"In view of these decisions, it is clear that there is no federal-question presented relative to the order of the Kansas Corporation Commission raising the contract price to 11¢, and the unilateral rate change by the Federal Power Commission. Since the law is settled, there is no federal question."

Defendants say that these are removal cases, merely directing remand, and therefore not affirmative holdings sustaining the jurisdiction of the state courts. This distinction is not convincing. At the moment, they furnish a persuasive [fol. 69] guide to a state court confronted with a novel question not authoritatively settled by the Supreme Court. We think that we should follow their reasoning.

In support of their contention that the Natural Gas Act creates the liability in the cases before us, defendants cite decisions arising under the Interstate Commerce Act. In view of the decision in the *Mobile* case, we think them inapplicable.

The conclusion that the Natural Gas Act is not inconsistent with private contracts for restitution of overpayments in cases such as those before us finds support in the case of *Natural Gas Pipeline Co. v. Harrington* (5th C.C.A., 1957), 246 F.2d 915. That decision sustained an action for restitution of the difference between the contract rate and the price paid by Natural in compliance with an order of the Oklahoma Corporation Commission that was later declared invalid.

The Court said that any price in excess of the contract rate was "contrary to the spirit, if not the letter" of the Natural Gas Act; but it is clear to us that the Court did not hold that liability in such a suit was created by the Act; on the contrary, it clearly recognized the action as one founded on common law principles of restitution.

Defendants say that this case is not in point, because the gas contract and Oklahoma price order had not been filed with the Commission; but the Court of Appeals held [fol. 70] that this failure did not prevent the jurisdiction of the Commission from attaching, and that the contract rate became the only lawful rate until changed by order of the Commission. On the latter point, see also *Interstate Natural Gas Co. v. Southern California Gas Co.*, 209 F.2d 380 (9th CCA., 1953).

Defendants point to 4(a) of the Act, and to §154.21 of the Commission's regulations, embodying the requirement for reasonable rates and the prohibition against unreasonable rates. The argument seems to be that these provisions create a liability for repayment of the amounts of excessive charges. This argument is, we think, foreclosed by the decisions in *Montana-Dakota Utilities Co. v. Northwestern Public Service Co.*, 341 U.S. 246, 71 S.Ct. 692, and *T.I.M.E. Inc. v. United States*, 359 U.S. 464, 79 S.Ct. 904. The latter case involved the Motor Carrier Act of 1935; the former the Natural Gas Act. In the *Montana-Dakota* case the

Court, referring to the statutory requirement of reasonableness, said:

"But the prescription of the Statute is a standard for the Commission to apply, and independently of Commission action, creates no right which courts may enforce."

This holding was reaffirmed in the *T.I.M.E.* case.

One of the defendants urges that the *T.I.M.E.* case, which holds that there is no common law right of action for unreasonable rates under the Motor Carrier Act, is applicable to the cases before us. Since these actions are based on [fol. 71] private contracts, we do not think that the holding in the *T.I.M.E.* case applies.

The *Montana-Dakota* case, cited above, is relied on by defendants as authority for the general proposition that "the right to a reasonable rate is the right to the rate which the Commission files or fixes, and that, except for review of the Commission's orders, the courts can assume no right to a different one." In that case the Supreme Court considered a complaint alleging fraud in preventing plaintiff from pursuing before the Federal Power Commission its remedy for a reasonable rate. The case, as we read it, holds that, on an issue of the reasonableness of the rate, the jurisdiction of the Commission is exclusive. But here, as above noted, there is no issue of the reasonableness of the filed rate.

Defendants cite our own decisions refusing in corporate election proceedings to adjudicate claimed violations of the proxy rules of the Securities and Exchange Commission in respect to the solicitation of stock proxies.

Investment Associates Inc. v. Standard Power & Light Corporation, 29 Del.Ch. 225, — A 2d —, affirmed 29 Del.Ch. 593, — A 2d —, was such a case. The Vice Chancellor first held that exclusive jurisdiction to determine the validity of the proxy was vested in the federal courts, and that in any event, because of the need of uniformity in applying the act, the state courts would not entertain such a challenge. The decision was affirmed. It [fol. 72] was later followed in *American Hardware Cor-*

poration v. Savage Arms Corporation, — Del. —, 136 A 2d 690.

In those cases we were asked to adjudicate a violation of regulations under the Securities act; here we are not asked to adjudicate any violation of the Natural Gas Act, or, in our opinion, to enforce a liability created by that Act.

Defendants argue that Cities had a remedy before the Commission. Cities should, it is said, have attacked directly the filing of the Kansas price order as a part of the rate schedules, as it did in the *Magnolia* case. *Cities Service Gas Co. v. Federal Power Commission*, 255 F.2d 860.

The rule requiring the exhaustion of administrative remedies would certainly be applicable to a suit in the federal court attacking the reasonableness of the rate, but we think it inapplicable here, since no attack is made upon the "filed rate", which the federal courts have held to be the gas contract rate.

Defendants say that in any event Cities in attempting to attack collaterally the "filed rate", and that, whether right or wrong, the rate accepted for filing by the Commission, including the Kansas order, is the effective filed rate, and Cities is bound by it until it succeeds in having the Commission change it.

[fol. 73] The difficulty with this argument is, once again, that the federal courts have authoritatively held that the Kansas price-fixing order was void *ab initio* because the Natural Gas Act had pre-empted the field. Being void the unilateral filing of the order as part of the rate schedules was a nullity. This is not our adjudication; it is the adjudication of the federal courts.

Defendants cite *Federal Power Commission v. Interstate Natural Gas Co.*, 336 U.S. 517, — S.Ct. —, as holding that claims for refunds from regulated gas companies are determinable solely with reference to federal law. The case concerned a fund accumulated during litigation over Interstate's rates, which had been reduced by order of the Commission. The issue was whether the fund should go solely to four pipeline companies or (at least in part) to their customers who were the ultimate consumers of the gas. The Supreme Court held that the distribution of the fund was

governed by federal law and that the lower federal courts should determine the distribution between those entitled. The case does not seem to us to touch the point before us.

It is true that if Cities should recover the money for which it sues the distribution of the fund would be subject to the orders of the Federal Power Commission. See 15 F.P.C. 1448, 1453. But we do not understand the defendants to contend that the Commission is vested with power to en- [fol. 74] force refund contracts of the kind here sued on.

Defendants seek to build an argument upon the general proposition that the Natural Gas Act leaves no room for common law obligations to do that which the Act itself requires.

This argument seems to us to assume the very point in issue, that is whether the Act itself creates the liability here sued on. This is the basic question in the case.

One final observation must be made. A great deal of argument in the defendants' briefs is directed to an attempted limitation of the issues before the Superior Court and the issues before this Court. Most of this argument seems to us to miss the point. The substantial question which emerges, in one form or another, is whether the state courts have jurisdiction to entertain the suits on the refund contracts.

For the reasons above stated, we are of opinion that such jurisdiction exists.

The petition for a writ of prohibition is denied.

[fol. 75]

IN THE SUPREME COURT OF THE STATE OF DELAWARE

No. 69, 1959

COLUMBIAN FUEL CORPORATION, a Delaware corporation,
et al., Petitioners,

—v.—

THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR
NEW CASTLE COUNTY, et al., Respondents,

and

CITIES SERVICE GAS COMPANY, a Delaware corporation,
Intervening Respondent.

FINAL JUDGMENT—March 18, 1960

This 18th day of March, 1960,

This Court having filed its opinion, dated February 25, 1960, on the petition for a writ of prohibition herein, and petitioners having filed a motion, dated March 4, 1960, asking that the operation, execution, and enforcement of its judgment on that opinion be stayed in order to permit application for a writ of certiorari to be made to the Supreme Court of the United States,

It Is Hereby Ordered and Adjudged:

1. That the petition for a writ of prohibition is dismissed;

2. That the stay of all further proceedings in the Superior Court of the State of Delaware in and for New Castle County, in Civil Actions 670, 671, 708 and 722, 1958, contained in the order of this Court herein dated November 17, 1959, is vacated;

[fol. 76] 3. That the clerk of this Court shall return to the Prothonotary of the Superior Court of the State of Delaware in and for New Castle County the original records in Civil Actions 670, 671, 708 and 722, 1958, in that Superior Court, together with a certified copy of this order; and,

4. That the operation, execution and enforcement of paragraphs 1, 2, and 3 hereof are stayed in their entirety for a period of thirty days from the date hereof; and, as to any of the petitioners which shall have applied to the Supreme Court of the United States for a writ of certiorari herein within that time, the operation, execution and enforcement of those paragraphs are further stayed in their entirety as to those petitioners until the entry of a final order of the Supreme Court of the United States in any certiorari proceedings.

C. Southerland, Chief Justice; Daniel F. Wolcott,
Justice; Howard W. Bramhall, Justice.

Approved as to form:

Andrew B. Kilpatrick, Jr., Attorney for petitioners.

[fol. 77] [File endorsement omitted]

[fol. 78]

IN THE SUPREME COURT OF THE STATE OF DELAWARE

Civil Action No. 69, 1959

COLUMBIAN FUEL CORPORATION, a Delaware corporation,
 TEXACO, INC., a Delaware corporation, and PAN AMERICAN PETROLEUM CORPORATION, a Delaware corporation,
 Petitioners,

—v.—

THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR
 NEW CASTLE COUNTY, and the HONORABLE ANDREW D.
 CHRISTIE, sitting as a Judge of that Court, Respondents,
 and

CITIES SERVICE GAS COMPANY, a Delaware corporation,
 Intervening Respondent.

ORDER EXTENDING STAY—April 14, 1960

And Now to Wit this 14th day of April, 1960, upon the motion of the petitioners,

It Is Ordered that the stay of proceedings below as incorporated in the final judgment entered by this court on March 18, 1960, be, and it is hereby, extended until the further order of the court.

Daniel F. Wolcott

[fol. 79]

[File endorsement omitted]

Acknowledgment of service (omitted in printing).

[fol. 80]

IN THE SUPREME COURT OF THE STATE OF DELAWARE .

Civil Action No. 69, 1959

COLUMBIAN FUEL CORPORATION, a Delaware corporation,
 TEXACO, INC., a Delaware corporation, and PAN AMERI-
 CAN PETROLEUM CORPORATION, a Delaware corporation,
 Petitioners,

—v.—

THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR
 NEW CASTLE COUNTY, and the HONORABLE ANDREW D.
 CHRISTIE, sitting as a judge of that court, Respondents,

—and—

CITIES SERVICE GAS COMPANY, a Delaware corporation,
 Intervening Respondent.

ORDER TO CERTIFY THE RECORD—April 19, 1960

Now, to Wit, this 19th day of April, 1960, upon motion
 of the petitioners,

It Is Ordered, that the Clerk of the Supreme Court of
 Delaware shall certify the record of this court and the
 records of the Superior Court in each of the Superior
 Court cases to which this prohibition proceeding relates
 and shall transmit each of these records to the Clerk of
 the Supreme Court of the United States, accompanying a
 Petition for Writ of Certiorari, at such date as is designated
 for such transmittal by the attorney for the petitioner or
 petitioners who shall first file such a request;

And Further Ordered that the Supreme Court of the
 United States is hereby requested to remand the said
 records to the Clerk of this Court upon the conclusion of
 [fol. 81] the proceedings in the United States Supreme
 Court.

Daniel F. Wolcott, Justice.

Approved this 19th day of April, 1960.

Howard L. Williams, Bank of Delaware Building, Wil-
 mington, Delaware, Attorney for Intervening Respondent.

[fol. 82]

[File endorsement omitted]

[fol. 83]

IN THE SUPREME COURT OF THE STATE OF DELAWARE
Civil Action No. 69, 1959

COLUMBIAN FUEL CORPORATION, a Delaware corporation,
TEXACO, INC., a Delaware corporation, and PAN AMERI-
CAN PETROLEUM CORPORATION, a Delaware corporation,
Petitioners,

—v.—

THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR
NEW CASTLE COUNTY, and the HONORABLE ANDREW D.
CHRISTIE, sitting as a judge of that court, Respondents,

—and—

CITIES SERVICE GAS COMPANY, a Delaware corporation,
Intervening Respondent.

ORDER EXTENDING STAY—April 19, 1960

Now, to Wit, this 19th day of April, 1960, upon motion of
the petitioners,

It Is Ordered, that the stay of proceedings below as in-
corporated in the final judgment entered by this court on
March 18, 1960, and subsequently extended, be, and it is
hereby, further extended until and including the 9th day
of May, 1960.

Daniel F. Wolcott, Justice.

Approved as to Form this 19th day of April, 1960.

Howard L. Williams, Bank of Delaware Building, Wil-
mington, Delaware, Attorney for the Intervening Respon-
dent.

[fol. 84]

[File endorsement omitted]

[fol. 85] Clerk's Certificate to foregoing transcript
(omitted in printing).

[fol. 86]

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

No. 671

CITIES SERVICE GAS COMPANY, a Corporation, Plaintiff,

—VS.—

THE TEXACO COMPANY, a Corporation, Defendant.

COMPLAINT—Filed June 16, 1959

Comes now plaintiff Cities Service Gas Company and for its cause of action against defendant The Texas Company states:

1. Plaintiff is a citizen and a resident of the State of Delaware, it being a corporation duly organized and existing under the laws of that state.

2. Defendant is a citizen and a resident of the State of Delaware, it being a corporation duly organized and existing under the laws of that state.

3. Plaintiff and defendant entered into the following contracts covering the purchase by plaintiff and the sale by defendant of natural gas produced in the Kansas-Hugoton Field in the State of Kansas, namely:

(A)—Contract dated June 16, 1949, under which gas deliveries began on September 6, 1949, and wherein Columbian Fuel Corporation and defendant are jointly designated "Seller", providing, among other things, for:

- (1) the sale and delivery by Seller to plaintiff, at the wellhead of all gas produced from certain therein described lands;
- (2) a term of ten years from first gas delivery and thereafter for successive annual periods, providing

either party may cancel at or after the expiration of the 10-year period;

(3) the payment by plaintiff to Seller for gas delivered during the first 5 years after first delivery at 7¢ per Mcf, and thereafter in the event the weighted average price paid by plaintiff to others for gas produced in such field should exceed 7¢, then the price would be increased to the weighted average price while so paid, provided such prices shall be decreased, on a monthly basis, proportionately to the deficiency in the gross heating value of the gas below 1,000 British Thermal Units per cubic foot; and

(4) the measurement of all gas on a pressure base of 16.4 psia, assumed and agreed to obey Boyle's Law.

[fol. 87]. (B)—Letter dated December 17, 1951, from defendant to plaintiff providing, subject to revocation at any time, defendant sold to plaintiff defendant's undivided 25% interest in gas produced from Hacker-Engel Unit, Section 1-34S-34W, and Shorb-Engel Unit, Section 12-34S-34W, Seward County, Kansas, in accordance with the price terms of a gas purchase contract between Sunflower Natural Gas Company, Inc. and plaintiff dated January 10, 1950, which contract is referred to in said letter as being dated March 8, 1950. The Sunflower contract provides, among other things, for:

(1) the sale and delivery of gas at the wellhead;

(2) the payment by plaintiff to Sunflower of 9¢ per Mcf through June 22, 1956, and 10¢ per Mcf from June 23, 1956 to June 22, 1962, inclusive, and thereafter an adjustment of price for each 6-year period, provided such prices shall be decreased, on a monthly basis, proportionately to the deficiency in the gross heating value of gas below 960 BTU's per cubic foot; and

(3) the measurement of gas at a pressure base of 16.4 psia assumed and agreed to obey Boyle's Law.

(C)—Letter dated December 20, 1951, from defendant to plaintiff providing, subject to revocation at any

Finney County, Kansas, for a judicial review of the said Order.

"Pending final judicial determination of the said Order and beginning January 1, 1954, Cities Service Gas Company intends to pay for all gas purchased by it in the Kansas-Hugoton Field in strict compliance with the terms and conditions of the said Order. Such compliance with said Order by this Company, however, is made to avoid the penalties and actions provided by the Kansas statutes for a violation thereof, and the payments made to you in compliance with said Order pending its final judicial determination are to be considered and accepted by you as involuntary payment on our part, without prejudice to our rights in said litigation, and in no event as an acquiescence by us in the validity of said Order.

"In the event the said Order is finally judicially modified or declared to be invalid in whole or in part, as a result of which you have been overpaid for gas purchased during the interim aforesaid, Cities Service Gas Company will expect you to refund to it the amount of said overpayments."

Subject to and in accordance with such Refund Letter, plaintiff monthly issued a voucher check to defendant covering each monthly volume of gas purchased by plaintiff from defendant under such purchase contracts, subsequent to the effective date of such order and until January 23, 1957. Each such voucher check contained the following statement:

"In full settlement of gas purchased for the period ending (appropriate date here inserted on each check), subject to the provisions of letters dated August 25, 1953 and January 21, 1954, with reference to gas purchased in Kansas."

The letter of August 25, 1953 referred to in the foregoing statement is not material herein.

Defendant endorsed each such voucher check and received and retained the benefits thereof,—all without protest.

6. The United States Supreme Court on January 20, 1958, in the case of Cities Service Gas Company v. State Corporation Commission, State of Kansas, 355 U.S. 391, 2 L.Ed. 355, finally judicially determined that such Order was invalid and beyond the jurisdiction of such Commission.

7. The overpayments plaintiff has made to defendant, being the difference between the price provided to be paid for gas purchased by plaintiff from defendant under each of the above mentioned purchase contracts and the price of gas at 11¢ per Mcf measured on a pressure base of 14.65 psia, as required by such order for the period January 1, 1954-December 22, 1957, both inclusive, are as follows:

[fol. 90]—Columbian Contract	—	\$399,667.90
Sunflower Contract	—	7,526.89
Western Contract	—	5,761.16

aggregating the principal sum of \$412,955.95.

8. Plaintiff has made demand upon defendant for the refund to plaintiff of the overpayment by plaintiff of the respective amount under each such purchase contract, as aforesaid, but defendant has failed, neglected and refused to make refund of such overpayments, or any part thereof, to plaintiff, and as a result defendant is indebted to plaintiff in the principal aggregate sum of \$412,955.95.

9. To avoid the criminal sanctions imposed by the Kansas Statutes for the violation of such Price Order, plaintiff made the above described overpayments to defendant involuntarily, under protest and under the compulsion of such Price Order and upon condition that defendant would promptly refund to plaintiff such overpayments if such Price Order should be finally judicially determined to be invalid, as stated in said Refund-Letter.

10. By reason of the facts hereinabove stated, defendant has become obligated and indebted to plaintiff as follows:

9. Denied.

10. Denied.

(a) Denied. Plaintiff made no over-payments to defendant. No contract was made or subsists obligating defendant to make refunds to plaintiff: defendant did not assent to make any refunds to plaintiff, and there was no consideration for any alleged contract by defendant to make refunds to plaintiff. A contract by defendant to make refunds to plaintiff would have been unenforceable under the statute of frauds of Delaware, and the statutes of frauds of such other jurisdictions as might be applicable, inasmuch as such an agreement would have constituted a modification or part of a contract for the sale of goods of the required value.

[fol. 101] (b)-(c) Denied. Plaintiff is not entitled to restitution, and defendant was not unjustly enriched because of the payments made by plaintiff to defendant for gas from the Kansas-Hugoton Field. Plaintiff itself acquiesced in the prices paid defendant for gas from the Kansas-Hugoton Field and is also estopped to assert that it is entitled to any refund of all or a portion of those payments.

SECOND DEFENSE

Defendant here incorporates the allegations of paragraph 4 of the First Defense.

THIRD DEFENSE

Defendant here incorporates the allegations of paragraphs 10(a) and (b)-(c) of the First Defense.

FOURTH DEFENSE

All payments by plaintiff to defendant for sales referred to in the complaint accorded with the minimum price for those sales required by the 11¢ Minimum Price Order of the Kansas State Corporation Commission which was and at all times has remained in full force and effect with respect to those sales and with the 14.65 p.s.i.a. pressure base for determining the quantity of those sales as required by

the July 1, 1953, Pressure Base Order of the Kansas State Corporation Commission, which at the times those sales were made was, and still is in full force and effect.

FIFTH DEFENSE

All payments by plaintiff to defendant referred to in the complaint for sales prior to July 16, 1954, accorded with [fol. 102] the minimum price for those sales required by the 11¢ Minimum Price Order of the Kansas State Corporation Commission, which was and at all times has remained in full force and effect with respect to those sales and with the 14.65 p.s.i.a. pressure base for determining the quantity of those sales as required by the July 1, 1953, Pressure Base Order of the Kansas State Corporation Commission, which at the times of those sales was, and still is, in full force and effect.

Defendant here incorporates the allegations of paragraph 6 of the First Defense. The lawfulness of all payments by plaintiff to defendant referred to in the complaint for sales made after June 7, 1954, was controlled exclusively by rates filed with and accepted by the Federal Power Commission pursuant to the rules and regulations promulgated by it under the Natural Gas Act with respect to independent producers, and plaintiff does not base its claim upon those rates. The payments required to be made at the 11¢ filed and accepted rate were the same as those required to be made for sales referred to in the complaint that occurred prior to June 7, 1954.

SIXTH DEFENSE

And for a further alternative defense to the complaint, defendant alleges that a large part of all the gas referred to in the complaint—the exact amount being known to the plaintiff only—was gas destined never to leave the State of Kansas, but, to be sold and ultimately consumed in intrastate commerce, rather than in interstate commerce, as to [fol. 103] all of which the Minimum Price and Standard Pressure Base Orders of the Kansas State Corporation Commission, referred to in the complaint and elsewhere in this answer, always were and have remained in full force and effect.

time, defendant sold to plaintiff defendant's undivided 25% interest in gas produced from Loewen Unit, Section 29-29S-28W, Grant County, Kansas, in accordance with the price-terms of gas purchase contract between Western Natural Gas Company and plaintiff dated September 29, 1949. The Western Contract provides, among other things, for:

- (1) the sale and delivery of gas at the wellhead;
- (2) the payment by plaintiff to Western of 8¢ per thousand cubic feet, provided such price shall be decreased proportionately to the deficiency in the gross heating value of gas, on a per well and monthly basis, below 975 BTU's per cubic foot; and
- (3) the measurement of gas at a pressure base if 16.4 psia corrected for deviation from Boyle's Law.

4. On December 2, 1953, the State Corporation Commission, State of Kansas, entered its Order in Docket No. 40,079-C (C-3216), effective January 1, 1954, providing that all parties taking gas from the Hugoton Gas Field in Kansas shall pay or attribute to such gas a price of not less than 11¢ per Mcf measured at 14.65 psia at the wellhead. A true and correct copy of such Price Order, marked Exhibit "A", is attached hereto and made a part hereof.

The effect of such Order, if valid, was to increase the cost to plaintiff for gas purchased under such contracts, as follows:

[fol. 88] *Columbian Contract*

(a) When measured on the contract base of 16.4 psia:

- (1) gas having a BTU content of 975 or more was increased from an average of 8.0¢ to 12.61¢; and
- (2) gas having a BTU content of less than 975 was increased from less than 8.0¢ to 12.61¢.

(b) When measured on the pressure base of 14.65 psia as required by such Order:

- (1) gas having a BTU content of 975 or more was increased from 6.976¢ to 11¢; and
- (2) gas having a BTU content of less than 975 was increased from less than 6.976¢ to 11¢.

Sunflower Contract

When measured on the contract pressure base of 16.4 psia the price was increased from 9¢ to 12.6¢ and when measured on the pressure base of 14.65 psia, as required by such order, the price was increased from 7.86¢ to 11¢.

Western Contract

- 5. When measured on the contract base of 16.4 psia deviated, the price was increased from 8¢ to 12.314¢ and when measured on the pressure base of 14.65 psia, as required by such order, the price was increased from 7.146¢ to 11¢.

Such Order, if valid, imposed criminal sanctions for its violation, as provided in Secs. 55-708, 709, and 710, General Statutes of Kansas, 1949. Each such Kansas Statute is set out verbatim as Exhibit "B" attached hereto and made a part hereof.

- 5. Thereafter, on January 21, 1954, and before payment was made for gas produced on and after January 1, 1954, the effective date of such Order, plaintiff wrote defendant the following letter (Refund Letter) which, omitting date, salutation, closing and signature, reads:

"The State Corporation Commission of the State of Kansas by Order dated December 2, 1953, in Docket No. 44079-C (C-3216) directed that on and after January 1, 1954, as a condition precedent for withdrawal of gas from the Hugoton Gas Field in Kansas, there shall be paid therefor or attributed thereto, at the wellhead, a minimum price of not less than eleven cents (11¢) per M.c.f. (14.65 pounds p.s.i.a.).

"Cities Service Gas Company and certain other par-[fol. 89] ties filed Petitions in the District Court of

(a) The payment by plaintiff to defendant of such overpayments, as aforesaid, subject to and in accordance with such Refund Letter, the endorsement by defendant of each such voucher check issued by plaintiff and accepted by defendant subject to such Refund Letter and the receipt and retention by defendant of the benefits of all such overpayments without protest, created and made a valid contract between plaintiff and defendant whereby defendant agreed with plaintiff that if and upon the final judicial determination of the invalidity of such order, defendant would refund to plaintiff all such overpayments. Upon the determination of the invalidity of such order by the United States Supreme Court, as aforesaid, defendant therefore became obligated under such contract to refund to plaintiff such overpayments aggregating the sum of \$412,955.95, together with interest at 6% per annum from the date of each such overpayment; or

(b) By reason of the promulgation of such order and the liabilities and criminal sanctions imposed by the [fol. 91] Kansas Statutes for the violation of such order, plaintiff has been required under the compulsion of such order involuntarily to make such overpayments to defendant. Upon the final judicial determination of the invalidity of such order by the United States Supreme Court, defendant became and is legally and equitably obligated to restore and make restitution to plaintiff of such overpayments in the aforesaid aggregate amount of \$412,955.95, with interest thereon at 6% per annum from the date of each such overpayment; or

(c) By reason of the receipt and retention by defendant of such overpayments, involuntarily paid by plaintiff under and by the compulsion of such order, defendant has been unjustly enriched in the aforesaid aggregate sum of such overpayments, and defendant thereby became and is legally and equitably obligated to restore and repay such overpayments to plaintiff in the aggregate sum of \$412,955.95 with interest thereon at 6% per annum from the date of such overpayments.

Wherefore, plaintiff demands judgment against defendant for the principal sum of \$412,955.95, with interest thereon at 6% per annum from the date of such overpayment and for all other relief to which plaintiff may be entitled in the premises and for costs of this action.

J. J. Morris, Jr. and H. L. Williams, of Morris, James, Hitchens & Williams, Delaware Trust Building, Wilmington, Delaware, Attorneys for Plaintiff.

Conrad C. Mount, O. R. Stites, Joe Rolston, Gordon J. Quilter, R. R. McCracken, of Counsel for Plaintiff, Cities Service Gas Company, First National Building, Oklahoma City, Oklahoma.

[fol. 92] [File endorsement omitted]

[fol. 93]

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

Civil Action No. 671, 1958

CITIES SERVICE GAS COMPANY, a corporation, Plaintiff,

—v.—

THE TEXAS COMPANY, a corporation, Defendant.

ANSWER—Filed August 18, 1958

FIRST DEFENSE

Defendant responds to the respective numbered paragraphs of the complaint as follows:

1. Admitted.
2. Admitted.
3. Denied, except admitted that plaintiff and defendant entered into three contracts covering the purchase by plaintiff and the sale by defendant, in both intrastate and inter-

state commerce for resale by plaintiff for ultimate public consumption, of certain quantities of natural gas produced in the Kansas-Hugoton Field in the State of Kansas, but as to each contract defendant answers separately as follows:

(A) Denied, except: admitted that the basic agreement under what is referred to in the complaint as the "Columbian Contract" is dated June 16, 1949; admitted that gas deliveries commenced thereunder on August 30, 1949, not on September 6, 1949, as alleged in the complaint; admitted that Columbian Fuel Corporation and defendant are therein jointly and severally designated "Seller"; and that [fol. 94] the allegations characterizing and summarizing what that contract otherwise provided are admitted only in so far as they correspond to the actual terms of that contract which, together with the letter amendment dated September 8, 1949, but exclusive of all other amendments and modifications, is attached hereto as Exhibit "A" and incorporated herein.

(B) Denied, except: admitted that the basic agreement, which, in turn, is based in part on the contract referred to in the complaint as the "Sunflower Contract", is a letter from defendant to plaintiff dated December 17, 1951; admitted that therein defendant, "subject to revocation at any time," granted plaintiff "authority to make payment for The Texas Company's [defendant's] share of gas purchased from" defendant's undivided 25% working interest in the Hacker-Engel Unit and its undivided 50% working interest in the Shorb-Engel Unit of the Kansas-Hugoton Field "in accordance with the price terms of" a Gas Purchase Contract dated January 10, 1950, between Sunflower Natural Gas Company, Inc., and plaintiff; and that the allegations characterizing and summarizing what that contract otherwise provided are admitted only in so far as they correspond to the actual terms of that contract. The letter from defendant to plaintiff dated December 17, 1951, is attached hereto as Exhibit "B", the Gas Purchase Contract dated January 10, 1950, between Sunflower Natural Gas Company, Inc. and Cities Service Gas Company, is attached hereto as Exhibit "C", and both are incorporated herein.

(C) Denied, except: admitted that the basic agreement, which, in turn, is based in part on the contract referred to in the complaint as the "Western Contract", is a letter from [fol. 95] defendant to plaintiff dated December 20, 1951; admitted that therein defendant, "subject to revocation at any time," granted plaintiff "authority to make payment for The Texas Company's [defendant's] share of gas purchased from" defendant's undivided 25% working interest in the Loewen Unit of the Kansas-Hugoton Field "in accordance with the price terms of" a Gas Purchase Contract, dated September 29, 1949, between Western Natural Gas Company and plaintiff; and that the allegations characterizing and summarizing what that contract otherwise provided are admitted only in so far as they correspond to the actual terms of that contract. The letter from defendant to plaintiff dated December 20, 1951, is attached hereto as Exhibit "D", the Gas Purchase Contract dated September 29, 1949, between Western Natural Gas Company and Cities Service Gas Company is attached hereto as Exhibit "E", and both are incorporated herein.

4. Denied, except: admitted that on December 2, 1953, the State Corporation Commission, State of Kansas, entered its Price Order in Docket No. 44,079-C (C-3216), effective January 1, 1954, providing that all parties taking gas from the Hugoton Gas Field in Kansas, shall pay or attribute to such gas a price of not less than 11¢ per Mcf measured at 14.65 p.s.i.a. at the wellhead, a true and correct copy of which is attached to the complaint as Exhibit "A"; and admitted that if this Price Order of the Kansas State Corporation Commission was valid, sanctions for its violation were provided by §§ 55-708, 709 and 710, General Statutes of Kansas, 1949, which are set out verbatim in Exhibit "B" attached to the complaint. This Price Order of the [fol. 96] Kansas State Corporation Commission entitled defendant, during the period covered by the complaint, to the price of 11¢ per Mcf measured at 14.65 p.s.i.a. for all natural gas from the Kansas-Hugoton Field sold and delivered by it to plaintiff.

Throughout the period covered by the complaint, the price paid by plaintiff to all producers for natural gas from the Kansas-Hugoton Field was 11¢ per Mcf measured

at 14.65 p.s.i.a. Paragraph 6 of the "Columbian Contract" between plaintiff and defendant specified:

"In the event the weighted average price paid by Cities to producers other than Seller, for gas produced in the Kansas-Hugoton Field exceeds the price to be paid to Seller under the provisions hereof, the price herein shall be increased to such weighted average price while so paid; . . ."

This provision of the "Columbian Contract" also entitled defendant, during the period covered by the complaint, to the price of 11¢ per Mcf at 14.65 p.s.i.a. for all natural gas delivered by it to plaintiff pursuant to that contract. If defendant had not been entitled during that period to the price of 11¢ per Mcf at 14.65 p.s.i.a. for all natural gas delivered by it to plaintiff pursuant to the "Columbian Contract," defendant would have been entitled during that period to some other "weighted average price," computed under paragraph 6 of the "Columbian Contract," for all natural gas delivered by it to plaintiff pursuant to that contract, but defendant is without knowledge or information sufficient to form a belief as to what, under those circumstances, that "weighted average price" would have been.

If defendant had not been entitled, during the period covered by the complaint, to the price of 11¢ per Mcf at 14.65 p.s.i.a. for all natural gas sold and delivered by it [fol. 97] to plaintiff pursuant to its said contracts, a Pressure Base Order of the Kansas State Corporation Commission and correspondence of plaintiff relating thereto would have entitled defendant, during that period: to the "weighted average price" referred to herein, computed on a pressure base of 14.65 p.s.i.a., for deliveries pursuant to the "Columbian Contract"; to a price of 9¢ per Mcf at 14.65 p.s.i.a., or 10.25¢ per Mcf at 16.4 p.s.i.a., for all deliveries pursuant to the contract based on the "Sunflower Contract" up to June 23, 1956, and to a price of 10¢ per Mcf at 14.65 p.s.i.a., or 11.4¢ per Mcf at 14.65 p.s.i.a., for all deliveries pursuant to the contract based on the "Sunflower Contract" on and after June 23, 1956; and to a price of 8¢ per Mcf at 14.65 p.s.i.a., or 8.95¢ per Mcf at 16.4 p.s.i.a., for all de-

/liveries pursuant to the contract based on the "Western Contract."

Prior to January 1, 1954, the Kansas State Corporation Commission, in its Docket No. 34780-C (C-1825), issued a Pressure Base Order effective as of July 1, 1953, which is attached hereto as Exhibit "F". It states in part:

"Gas, Cubic Foot, shall mean the volume of gas contained in one cubic foot of space at a standard pressure base and at a standard temperature base. The standard pressure base shall be 14.65 pounds per square inch absolute, and the standard temperature base shall be 60 degrees Fahrenheit. Whenever the conditions of pressure and temperature differ from the above standard, conversion of the volume from these conditions to the standard conditions shall be made in accordance with the Ideal Gas Laws corrected for deviation."

On or about July 17, 1953, plaintiff wrote defendant a letter concerning that Pressure Base Order which stated in part:

[fol. 98] "You perhaps know that the Corporation Commission of Kansas has issued an order, effective July 1, 1953, which purports to establish a measurement base for natural gas different from that set forth in our subsisting gas purchase contract.

"... [T]his Company together with certain other companies similarly situated have instituted independent actions against the Commission in the District Court of Shawnee County, Kansas, seeking judicial determination of the validity, meaning, effect and applicability of said order as it may apply to our purchases of gas in Kansas.

"Pending the final judicial interpretation of said order, either in the litigation above referred to or other possible litigation that has been instituted with reference to such order, we propose currently to make payment for gas at the price and upon the pressure base provided in said contracts. When the next such pay-

ment is made you will be advised that the same is made to and accepted by you without prejudice to the rights of either of us pending the hearing and final determination of such litigation. After final determination of the matter, if we have either underpaid or overpaid you for any gas so purchased, then it is understood that proper adjustment therefor shall be promptly made, without interest, by the party legally obligated so to do."

Thereafter, on August 25, 1953, when forwarding to defendant a check for certain natural gas sold and delivered pursuant to the aforesaid contracts, plaintiff again wrote defendant a letter about that Pressure Base Order, stating therein:

"This payment is made to and accepted by you and future payments under said contract are to be made to and accepted by you without prejudice to the rights of either of us as outlined in our letter to you of July 17, 1953, pending the hearing and final determination of the litigation referred to in said letter."

Plaintiff wrote on the monthly voucher checks issued by it to defendant for natural gas delivered to it pursuant to these contracts and during the period covered by the complaint that they were to be taken "subject to the provisions of" that letter of August 25, 1953. Plaintiff and the others referred to in the above letter of July 17, 1953, were ultimately unsuccessful in the litigation instituted by them concerning the validity and scope of the Pressure Base [fol. 99] Order, and that Order has at all times remains, (sic) and is now, in full force and effect. That Pressure Base Order of the Kansas State Corporation Commission and plaintiff's agreement to make, under these circumstances, adjustments in its payments in accordance therewith would, in any event, have entitled defendant to a price for the natural gas from the Kansas-Hugoton Field sold and delivered by it to plaintiff, during the period covered by the complaint, computed on a pressure base of 14.65 p.s.i.a.

5. Denied, except admitted that on or about January 21, 1954, and before payment was made for gas produced on

and after January 1, 1954, the effective date of the Price Order of the Kansas State Corporation Commission, plaintiff wrote defendant the letter which is quoted in part in paragraph "5" of the complaint; that plaintiff monthly issued a voucher check to defendant covering each monthly volume of gas from the Kansas-Hugoton Field purchased by plaintiff from defendant subsequent to the effective date of such Price Order and until January 23, 1957, each containing the statement quoted in paragraph "5" of the complaint; and that defendant endorsed each such voucher check and received the benefits thereof.

6. Denied, except admitted that, on January 20, 1958, the United States Supreme Court, in the case of *Cities Service Gas Company v. State Corporation Commission, State of Kansas*, 355 U.S. 391, 2 L.Ed. 355, reversed the judgment of the Supreme Court of Kansas reported at 180 Kan. 454, 304 P.2d 528.

As of June 7, 1954, defendant was determined by the Federal Power Commission, with respect to such sales as are referred to in the complaint, to be a natural gas company within the meaning of the Natural Gas Act (15 U.S.C., § 717(a), et-seq.), engaged as an independent producer in making such sales.

[fol. 100] In compliance with the pertinent rules and regulations of the Federal Power Commission, defendant established as its initial regulatory rate, as of June 7, 1954, under the Natural Gas Act, the rate of 11¢ per Mcf, measured at 14.65 p.s.i.a., for the sales of the natural gas referred to in the complaint, which lawful effective rate has never been decreased.

Although defendant gave plaintiff prompt notice of the filing of its rate schedules and its application for certificates of public convenience and necessity, and of the dates of acceptance of said rates for filing, authorizing such sales, as well as of the dates of issuance of said certificates, plaintiff never contested, protested or objected to the said 11¢ filed rate in the manner and form prescribed by law.

7. Denied.

8. Denied, except admitted that plaintiff demanded from defendant the respective amounts referred to and that defendant declined to pay them.

SEVENTH DEFENSE

Claims for all or a portion of the payments made by plaintiff to defendant referred to in the complaint are barred by the statute of limitations of Delaware and the statutes of limitations of such other jurisdictions as might be applicable.

Morris, Nichols, Arsht & Tunnell, James M. Tunnell, Jr., Andrew B. Kirkpatrick, Jr., Attorneys for Defendant, 3000 duPont Building, Wilmington, Delaware.

Of Counsel: Paul F. Schlicher, 24th Floor Chrysler Bldg., 135 East 42nd Street, New York, New York.

August 18, 1958

[fol. 104]

EXHIBIT A TO ANSWER

[Emblem]

CITIES SERVICE GAS COMPANY

FIRST NATIONAL BUILDING
OKLAHOMA CITY, OKLAHOMA

September 8, 1949

The Texas Company

P. O. Box 2420

Tulsa 2, Oklahoma

Attention: M. J. Heald, Division Manager
and

Columbian Fuel Corporation

41 East 42nd Street

New York 17, N. Y.

Attention: R. A. Putnam, Contract Supervisor

Gentlemen:

Under date of June 16, 1949, your companies entered into a certain gas purchase contract with us (wellhead form) covering your sale and our purchase of gas from wells on

sixteen (16) sections of land in the Moscow and Pleasant Valley Blocks, Stevens County, Kansas.

We understand that you now wish to amend said contract to include gas produced from Section 14-34S-351., Stevens County, Kansas, in which The Texas Company owns a 91% interest and Columbian Fuel Corporation owns a 9% interest in and to the gas rights.

We are willing to amend said gas purchase contract to include said Section 11 and ask that two (2) copies of this letter be executed for each of your companies and returned to us, whereupon said gas purchase contract will be deemed amended to include said Section 11.

Yours very truly,

/s/ GEO. H. BAIRD
Vice President

Geo. H. Baird/d

Amendment Agreed To:

THE TEXAS COMPANY

By _____
Attorney in Fact

Amendment Agreed To:

COLUMBIAN FUEL CORPORATION

By /s/ C. E. KAYSER
President

[fol. 105] GAS PURCHASE CONTRACT
(Wellhead Form)

GP-734

This contract made and entered into this 16th day of June, 1949, by and between THE TEXAS COMPANY, a Delaware corporation having offices in Tulsa, Oklahoma, and COLUMBIAN FUEL CORPORATION, a Delaware corporation having offices in New York, N. Y., hereinafter referred to jointly and severally as Seller, and CITIES SERVICE GAS

COMPANY, a Delaware corporation having offices in Oklahoma City, Oklahoma, hereinafter referred to as Cities.

WITNESSETH:

WHEREAS, Seller is the owner of the gas rights by virtue of valid oil and gas leases covering all of Sections Twenty-seven (27) to Thirty-four (34), inclusive, Township Thirty-one (31) South, Range Thirty-six (36) West, Stevens County, Kansas, known to the parties hereto as the "Moscow Block;" and covering all of Section One (1) to Five (5), inclusive, in Township Thirty-four (34) South, Range Thirty-five (35) West, and all of Sections Thirty-three (33), Thirty-four (34) and Thirty-five (35), in Township Thirty-three (33) South, Range Thirty-five (35) West, known to the parties hereto as Seller's "Pleasant Valley Block," all in Stevens County, Kansas, containing a total of ten-thousand two-hundred-forty (10,240) Acres, more or less; and,

WHEREAS, Seller is desirous of developing its said leases for gas production and of obtaining a market for such gas as may be legally produced therefrom, and Seller is willing to contract gas produced from them, except casinghead gas, to Cities in order to justify its construction of pipelines necessary to gather gas from Seller's wells to be drilled on said leases; and,

WHEREAS, Cities contemplates the construction of a large size pipeline to extend eventually from its Hugoton compressor station located in Section Three (3), Township Twenty-nine (29) South, Range Thirty-five (35) West, Grant County, in a southerly direction approximately thirty (30) miles to the vicinity of Cities' Stevens County, Kansas, block of leases located in Township Thirty-four (34) South, Range Thirty-five (35) West, and said pipeline will be located near to Seller's said leases; all at Cities own cost, risk and expense; and

WHEREAS, Cities has also made arrangements for the temporary local sale to a third party and for the later exchange of gas produced in the Kansas-Hugoton Field and can dispose of gas purchased from Seller hereunder pending

[fol. 106] final construction of Cities' said pipeline to its Stevens County block from its said compressor station; and

WHEREAS, Cities is in the business of selling natural gas at wholesale to chosen customers and to distributors thereof and is desirous of obtaining additional supplies of such merchantable gas to meet its requirements.

Now, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Seller and Cities have agreed each with the other as follows:

1. Cities contemplates the eventual construction of a pipeline of large diameter from its said Hugoton compressor station in a southerly direction to a point located within or near to Township Thirty-four (34) South, Range Thirty-five (35) West, Stevens County, Kansas, for the transportation of gas to be produced from Seller's said leases, among others, to its Grant County, Kansas to Kansas City twenty-six (26) inch main trunk line, and pending the construction of said pipeline Cities agrees to construct gathering lines to receive and market gas from Seller's wells and Cities will have said gathering lines completed and ready for operation with Seller's then completed wells connected thereto not later than August 1, 1949.

2. Each one of Seller's said leases is accurately described in detail on a list attached hereto marked Exhibit "A" and made a part hereof, showing Seller's lease number, the number of acres contained in each one, and the expiration date of each such tract, whether Seller's gas rights are owned by virtue of a valid oil and gas lease, a lease covering the gas rights only, by mineral deed or lands owned in fee.

3. Seller represents that it is the owner or operator of the gas rights under gas leases, oil and gas leases or mineral rights covering the lands specified in the attached Exhibit "A". Seller agrees, and covenants that it will, at its own cost, risk and expense drill a gas well on each of the units including such leases to a depth sufficient to test the present known gas-bearing formations in this immediate area and Seller will carry-on such drilling until Seller may encounter a situation where, in the Seller's opinion, it would not be

prudent for the Seller to drill a well on one or more of the units including such leases.

4. For the purpose of properly measuring the gas to be sold and delivered hereunder by Seller to Cities, Cities [fol. 107] agrees to so install, operate and maintain metering equipment of suitable size and design at a suitable location on each drilling unit upon which Seller has completed a commercial gas well. Cities is hereby given easement by Seller for the installation, operation and maintenance of such metering equipment together with the necessary pipeline to the gas well on each drilling unit on any of Seller's such owned lands, insofar as Seller has legal right to grant such easements and Cities is hereby granted the right of removing its such equipment within a reasonable time after the expiration or cancellation hereof. Seller shall have the right to inspect said metering equipment in the presence of representatives of Cities and to require tests thereof and to witness same, but in no event shall Seller have the right to alter or in any manner disturb, manipulate or tamper with any of Cities' such equipment. Cities shall test the metering equipment installed for the purpose of measuring gas delivered hereunder at least once each month or oftener if deemed necessary and Seller shall have the right to have a representative present at the tests so made. If, upon any test, any metering equipment is found to be inaccurate by three (3) per cent or more, registration thereof shall be corrected at the rate of such inaccuracy for any period which is definitely known or agreed upon, but in case such period is not definitely known and cannot be agreed upon from other meters or available records, then for any period of incomplete or inaccurate operation the settlement shall be in accordance with the available readings taken during the last preceding ten (10) days when the meter was registering accurately, and for the first ten (10) days after the meter was restored to accuracy giving due consideration to the difference in operation of Seller's wells but the period of adjustment shall not exceed thirty (30) days preceding the test and all claims of either party as to the gas delivered or received otherwise than as shown by said meters, must be preferred in writing by such claim-

ing party within ninety (90) days from the commencement of such claimed discrepancy, and all claims of each party hereto concerning either the comparative amount, as related to other wells, or the absolute amount, of gas taken are waived unless corrections or adjustments are made or claimed in writing within said ninety (90) days' period.

The gas delivered hereunder shall be measured at prevailing meter pressures and the volumes thereof shall be computed on a pressure base of sixteen and four-tenths (16.4) pounds per square inch absolute pressure and on a temperature base of sixty (60) degrees Fahrenheit. It is assumed and agreed for the purpose of this contract that the gas delivered hereunder obeys Boyles' Law and flowing temperature of the gas in the meter is sixty (60) degrees Fahrenheit.

In the event orifice meters are used for the measurement of gas delivered hereunder by Seller to Cities, coefficients shall be based on the basic orifice factor as last published and approved by the Gas Measurement Committee of the American Gas Association. It is assumed and agreed that the values of the Reynolds number factor and the expansion factor are one (1). Specific gravity determinations for the purpose of measurement computation shall be made in accordance with an approved method and the average of these determinations during each current fiscal month shall be used at the close of that month for calculating the volume of gas delivered hereunder.

5. Subject to the terms and conditions and within the limitations herein set forth, Seller agrees to sell and deliver to Cities, and Cities agrees to purchase and receive from Seller all natural gas in its natural state of production, except casinghead gas, produced from Seller's said acreage; provided, that in the event at any time in Seller's opinion, the natural pressure of said gas at the head of any well or wells is insufficient for the delivery of the otherwise potential marketable volume therefrom into Cities' local gas gathering systems, then Seller shall have the right to install, operate and maintain at its own cost, risk and expense equipment for the purpose of boosting said pressure to that required for making up such pressure deficiency, but only while Seller meets Cities' standard

requirements for gas cooling and/or dehydration or so much of either as Cities in its sole judgment may deem necessary at each one of Seller's such compressor installations. Seller shall deliver gas hereunder to Cities in such volumes and at such times as requested by Cities up to the delivery capacity of Seller's wells located on said leases, provided, however, that Seller shall not be required to operate its wells in a manner not conforming to usual good practice. Unless and until Cities actually delivers gas from Seller's said acreage into said Grant County, Kansas to Kansas City twenty-six (26) inch main trunk line, Cities agrees to purchase and receive from Seller hereunder ratably with all natural gas produced by Cities from its own wells located in the Kansas-Hugoton Field. But, beginning with the fiscal month, as hereinafter defined, following the date when gas from Seller's wells is first delivered into said twenty-six (26) inch main trunk line, Cities agrees to purchase and receive from [fol. 109] Seller hereunder ratably with all natural gas purchased or produced by Cities in the Kansas-Hugoton Field and received into Cities' said Grant County, Kansas to Kansas City twenty-six (26) inch pipeline, such natural gas as may from time to time, be legally produced by Seller from wells located on its said leases. "Ratably" as used herein means in proportion to well allowables lawfully fixed and determined by the State Corporation Commission of Kansas, and if well allowables shall cease to be fixed by said Commission or other regulatory body having jurisdiction thereover, then, in proportion to the "deliverability" of the wells and the acreage attributable thereto, from which Cities shall be producing and/or purchasing gas from time to time and which are located in the Kansas-Hugoton Field.

6. Cities agrees to pay Seller for all of the gas sold and delivered hereunder at the rate of seven (7) cents per one thousand (1000) cubic feet, on the basis of agreed measurement elsewhere herein recited, during the first five (5) years beginning with the date of the first delivery of gas from Seller to Cities hereunder and seven and one-half (7½) cents per thousand (1000) cubic feet for all gas delivered hereunder during the next succeeding five (5) year period.

Payments shall be made monthly by check, on a division order to be furnished by Seller, and for all gas delivered hereunder during any fiscal accounting month payments shall be made on or before the twenty-fifth (25th) day of the next following calendar month. The fiscal accounting month shall be from the twenty-third (23rd) day of one calendar month to the twenty-second (22nd) day, inclusive, of the next succeeding calendar month. Cities shall accompany each monthly payment with a statement showing the gas delivered during the fiscal month for which settlement is being made.

It is agreed that temporarily Cities may sell gas from the Pleasant Valley acreage locally to another pipeline company pending arrangements for a permanent outlet. During the time Cities sells such gas locally, but not after November 22, 1949, the price for gas from said Pleasant Valley acreage shall be five (5) cents per thousand (1000) cubic feet instead of the price elsewhere herein provided.

In the event the weighted average price paid by Cities to producers other than Seller, for gas produced in the Kansas-Hugoton Field exceeds the price to be paid to Seller under the provisions hereof, the price herein shall be increased to such weighted average price while so paid; however, this provision shall not apply to the five (5) cents [fol. 110] temporary price for gas from the Pleasant Valley acreage. In determining the weighted average price paid to others, one-half cent ($1\frac{1}{2}\text{¢}$) shall be deducted from the prices paid by Cities in transactions where the producer gathers the gas and delivers it into Cities' main gathering line.

7. All of the property and equipment installed by either of the parties hereto, under the terms of this contract shall remain the property of that respective party, and each of the parties hereto shall have the right to remove its said equipment whenever it is no longer needed to enable such party to perform its obligations to the other party; however, it is understood and agreed that each of the parties hereto assumes as between the parties all of the responsibility for the operation and maintenance of, and the obligations arising out of, the property, machinery and equipment which it installs, and each of the parties hereto holds the other harmless from any and all damages and/or claims

for damages of whatsoever kind resulting from the operation, maintenance and reclaim of the property, machinery and equipment which it has installed.

8. Seller warrants title to the gas it delivers hereunder and right to sell same and that it is clear of all liens and adverse claims. In case of adverse claims to the title of any gas purchased hereunder or to the land from which it is produced or to any unpaid royalties, Cities may, without otherwise affecting this contract, retain the purchase price thereof (without interest) until such claim is finally determined or until adequate and satisfactory bond to hold it harmless is furnished.

9. Cities shall at no time be required to receive gas from Seller at any one of its such wells which has a gross heating value of less than nine hundred sixty (960) British Thermal Units per cubic foot; however, the receipt of gas of lesser BTU content shall not constitute a waiver of Cities' right to reject future deliveries of similar gas.

Cities shall have the right, when said gas becomes unmerchantable by reason of the hydrogen sulphide content or from any other or different causes affecting adversely the quality of the gas, or when the content of said gas renders the reception or transportation thereof in pipeline owned or operated by Cities hazardous, or difficult or injurious to its property or to the ultimate consumer thereof, to cease taking same until such time as it again becomes merchantable or the causes rendering the reception, transportation and utilization of said gas hazardous, difficult or injurious [fol. 111] as aforesaid are corrected; however, under no circumstances will it be urged that the gas available for delivery hereunder is unmerchantable, hazardous or injurious by reason only of excessive hydrogen sulphide content unless such content exceeds one (1) grain per hundred cubic feet or by reason only of excessive sulphur content, unless the total sulphur content exceeds twenty (20) grains per hundred cubic feet. The Seller shall, when said gas becomes unmerchantable or the reception, transportation and utilization thereof becomes hazardous, difficult or injurious as aforesaid, with all reasonable promptness take all reasonable and practicable steps to eliminate and correct the causes rendering such gas unmerchantable.

The unit of volume for determining gross heating value, hydrogen sulphide and sulphur content only shall be one (1) cubic foot of gas saturated with water vapor, at a base temperature of sixty (60) degrees Fahrenheit, and at a pressure of thirty (30) inches of mercury at thirty-two (32) degrees Fahrenheit. The gas to be delivered hereunder is assumed but not guaranteed to have a gross heating value of not less than one thousand (1000) BTUs per Cubic foot. If, in any fiscal month, as herein defined, the average heating value of the gas delivered from any such well shall fall below nine hundred and seventy-five (975) BTUs per cubic foot, the price to be paid by Cities to Seller for that gas delivered during such month shall be decreased proportionately to the deficiency in gross heating value below one thousand (1000) BTUs per cubic foot.

10. Seller agrees to arrange for a telephone and connections to be installed and maintained in its Kansas-Hugoton Field operating headquarters to enable the parties hereto to communicate with each other and Seller agrees to promptly notify by telephone the pressure dispatcher of Cities at Wichita, Kansas, or Cities' field representatives whose names, addresses and telephone numbers shall be furnished to Seller in writing of any interference affecting the delivery of gas hereunder, and to begin, increase, decrease or suspend the delivery of gas hereunder on the orders of said pressure dispatcher or any one of the above authorized representatives of Cities.

11. Cities shall not be bound by any transfer of interest in and to the gas purchased hereunder until it has been furnished with the original or a certified copy of the proper instruments showing clearly such transfer of interest.

12. This contract shall become effective on the date herein first recited and shall continue in force for a period of [fol. 112] ten (10) years after the date of the first delivery of gas from Seller to Cities hereunder, and for successive annual periods thereafter provided that either party may cancel this contract at or after the expiration of said ten (10) year term by giving the other party written notice of its intention to do so at least thirty (30) days prior to the beginning of any such annual period.

13. The existing gas conservation assessment tax of one-half ($\frac{1}{2}$) mill per thousand cubic feet of gas now assessed by the State of Kansas shall be paid wholly by Seller. Any increase in such gas conservation assessment or any new or additional production, severance, gathering, sales, delivery or other excise tax or taxes imposed upon Seller by the State of Kansas or any subdivision thereof, or by the Federal Government, in respect to the gas produced by Seller for delivery to Cities hereunder, shall be paid entirely by Seller in the first instance and Seller may bill Cities for one-half ($\frac{1}{2}$) of the amount annually and Cities agrees to pay promptly.

14. Seller reserves the right to use gas produced from its said leases for the development and operation of any of them and of other leases Seller now owns or may hereafter acquire in the vicinity thereof, and Seller reserves the right to deepen, plug back or abandon any well covered hereby whenever, in Seller's opinion it becomes necessary to do so.

15. Seller retains the right to terminate this contract by thirty (30) days' prior written notice, anything herein to the contrary notwithstanding, in the event either one or both of the following things occur as set out in (A) and (B), and by longer prior written notice in (C),

(A) If the Federal Power Commission shall assert its jurisdiction of the production, gathering, or the price paid the producer for gas sold under this contract.

(B) When Seller has prepared to and actually begins to use gas produced from said premises as a raw material for manufacturing processes of synthetic petroleum products or chemicals, and for the fuel requirements of that plant only.

(C) Seller also retains the right to withdraw permanently from the terms of this contract any well or wells after the wellhead pressures thereof shall have declined to such an extent that gas therefrom will not feed into Cities' local gas gathering systems by natural

well pressures, unless Seller compresses gas therefrom, as elsewhere herein it retains the right to do; but then, [fol. 113] only after Seller has given notice to Cities in writing of its intention of so withdrawing any well or wells and setting the date therefor which date shall not be less than six (6) months after the date of Seller's such notice, anything elsewhere herein to the contrary notwithstanding.

Cities enters into contracts generally similar to this one for the purpose of obtaining sufficient reserves of gas to meet the requirements of the markets it now serves and/or may serve. It has determined from studies covering the possible connecting of substantial numbers of wells located or to be located in the general vicinity of said premises together with the costs of pipelines for the transportation of gas from those wells to its said Hugoton compressor station, that the costs thereof will approximate eighteen thousand dollars (\$18,000) per well.

Cities agrees to such whole or partial termination hereof by Seller and Seller hereby also agrees to reimburse Cities by check delivered to it within thirty (30) days after Seller's receipt of Cities' invoice setting out any unused portion of said costs per well less salvage value, if any, of the pipelines and equipment no longer required by Cities after such termination under the provisions of (A) and (B) of this Section Fifteen (15) hereof by Seller in the proportion that said unused portion of the firm term hereof is to said ten (10) year firm term.

16. All of the terms, covenants and agreements hereof shall run in favor of and be binding upon the parties hereto, their successors and assigns. This contract is assignable by either party hereto, but only after such party has obtained the written consent of the other party to such assignment.

17. The agreements and undertakings hereof are subject to valid present and future orders, rules and regulations of duly constituted authorities having jurisdiction.

18. In the event of either party hereto being rendered unable, wholly or in part, by force majeure to carry out

its obligations under this agreement, it is agreed that on such party giving notice and full particulars of such force majeure in writing or by telegraph to the other party as soon as possible after the occurrence of the cause relied on, then the obligations of the party giving such notice, so far as they are affected by such force majeure, shall be suspended during the continuance of any inability so caused but for no longer period, and such cause shall as far as possible be remedied with all reasonable dispatch.

[fol. 114] The term "force majeure" as employed herein shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of governments and people, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, partial or entire failure of wells, and any other causes, whether of the kind herein enumerated or otherwise, except financial, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome; such term shall likewise include, (a) in those instances where any party hereto is required to obtain servitudes, rights of way grants, permits or licenses to enable such party to fulfill its obligations hereunder, the inability of such party to acquire, or the delays on the part of such party in acquiring, at a reasonable cost and after the exercise of reasonable diligence, such servitudes, rights of way grants, permits or licenses; and (b), in those instances where any party hereto is required to furnish materials and supplies for the purpose of constructing or maintaining facilities or is required to secure permits or permissions from any governmental agency to enable such party to fulfill its obligations hereunder, the inability of such party to acquire, or the delays on the part of such party in acquiring, at reasonable cost and after the exercise of reasonable diligence, such materials and supplies, permits and permission.

It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirements

that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes or lock-outs by acceding to the demands of opposing party when such course is inadvisable in the discretion of the party having the difficulty.

IN WITNESS WHEREOF, the parties hereto have executed this instrument in quadruple the date and year first above written.

THE TEXAS COMPANY

By /s/ M. J. HEALD
Attorney in Fact

COLUMBIAN FUEL CORPORATION

By /s/ C. E. KAYSER
President
Jointly and Severally as "Seller"

ATTEST:

By: /s/ R. A. COVER
Ass't Secretary

[Seal]

Columbian Fuel Corporation

CITIES SERVICE GAS COMPANY

By /s/ GEO. H. BAIRD
Vice-President
"Cities"

ATTEST:

By: (Illegible)
Asst. Secretary

[Seal]

Cities Service Gas Company

[Stamp—Approved as to form /s/ Illegible—Checked and
Approved WAP, RAC]

[fol. 115]

EXHIBIT C To ANSWER

GAS PURCHASE CONTRACT

This contract made and entered into this 10th day of January, 1950, by and between Sunflower Natural Gas Company, Inc., a Kansas corporation, with offices in Kansas City, Missouri, hereinafter referred to as "Sunflower", and Cities Service Gas Company, a Delaware corporation, with offices in Oklahoma City, Oklahoma, hereinafter referred to as "Cities".

WITNESSETH:

WHEREAS, Sunflower owns leases covering gas rights on lands designated on the map and list attached hereto marked EXHIBIT A and hereby made a part hereof for all purposes and deems that at least 22,000 acres of said lands in Seward County, Kansas, and 5,883 acres of said lands in Texas County, Oklahoma, proven for natural gas production, and

WHEREAS, Sunflower intends to drill or cause to be drilled wells thereon and desires to sell the gas produced therefrom to Cities, and

WHEREAS, Sunflower may acquire additional acreage adjacent to or adjoining its presently owned acreage hereinabove described and if such additional acreage is acquired Sunflower intends to drill or cause to be drilled wells thereon and desires to market gas produced therefrom under this agreement, and

WHEREAS, Cities desires to purchase gas produced from said lands.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree each with the other as follows:

1. Subject to the terms and conditions herein set forth Sunflower agrees to sell and deliver to Cities and Cities agrees to purchase and receive from Sunflower all natural

gas in its natural state of production, except casinghead gas, produced from Sunflower's said acreage. Sunflower shall deliver gas hereunder to Cities in such volumes and at such times as requested by Cities up to the delivery capacity of Sunflower's wells located on said lands; provided, however, Sunflower shall not be required to operate its wells in a manner not conforming to usual good practice. Cities agrees to purchase and receive gas from Sunflower hereunder ratably with all natural gas purchased or produced by Cities in the Kansas Hugoton field and [fol. 116] in the Oklahoma Hugoton field as may from time to time be legally produced by Sunflower from said lands. "Ratably" as used herein with respect to wells located in Kansas means in proportion to well allowables lawfully fixed and determined by the State Corporation Commission of Kansas; likewise "ratably" as used herein with respect to wells located in Oklahoma means in proportion to well allowables lawfully fixed and determined by the State Corporation Commission of Oklahoma; and if well allowables shall cease to be fixed by either of said Commissions or other regulatory body having jurisdiction thereover, then in proportion to the deliverability of the wells, and the acreage attributable thereto, from which Cities shall be producing and/or purchasing gas from time to time in the Kansas Hugoton or the Guymon Hugoton field, respectively.

2. Sunflower reserves the right to use gas produced from said lands for the development and operation thereof and other leases and lands Sunflower may hereafter acquire in the vicinity thereof, and Sunflower reserves the right to deepen, plug back and abandon any well covered hereby whenever in Sunflower's opinion it becomes necessary to do so.

3. Sunflower agrees to drill or cause to be drilled upon said lands not less than two (2) wells per month, excepting for weather and other conditions beyond its reasonable control. Sunflower will cause such drilling operations to begin immediately upon final execution of this contract.

Sunflower agrees to maintain its gas rights upon said land in full force and effect, at its own cost and expense, until said lands are proven unproductive of gas in commercial quantities or until the leases on said lands or portions thereof have been tendered to Cities as herein provided. Sunflower shall have the right, from time to time to substitute acreage of equal value and extent for a like amount of acreage described and included in Exhibit A after first obtaining approval of Cities (and Cities agrees that it will not capriciously or unreasonably withhold its approval); provided, however, Sunflower shall have the right without consent of Cities to exchange or trade acreage dedicated hereunder with any acreage in the Hugoton field dedicated to Cities under its similar gas purchase contracts with others and Sunflower shall immediately notify Cities of any such exchange or trade. Any acreage acquired by Sunflower through substitution, exchange or trade shall immediately be dedicated in the same manner hereunder as the acreage designated in Exhibit A.

[fol. 117] If at any time Sunflower deems any of its leases, covered hereby, to have been condemned and of no longer any value or undesirable to keep or develop it shall tender to Cities at least sixty (60) days prior to the expiration date of any such lease or leases, an assignment of such lease or leases. If Cities declines to accept such assignment within thirty (30) days after the date of such tender, Sunflower may at its option release, surrender or otherwise dispose of such lease or leases. If Cities accepts such assignment of any lease or leases upon which there is a gas well, Cities shall pay to Sunflower the reasonable salvage value of the well, casing and equipment thereon used in the operation of said well or wells.

4. Cities agrees to construct gathering lines to receive gas from Sunflower's wells, it being understood that Cities shall not be obligated to begin the construction of such lines until Sunflower shall have completed on the Seward County lands covered by this contract, twenty-four (24) wells capable of producing gas in commercial quantities. Upon completion of said twenty-four (24) wells, Cities

shall proceed to build the lines and connect said wells with reasonable dispatch and to complete said lines and connections within ninety (90) days thereafter. It is understood and agreed that Cities shall not be required to connect and receive gas from wells located on the Texas County, Oklahoma acreage, covered hereby, prior to March 1, 1951, after which date Cities shall construct gathering lines and connect with reasonable dispatch all such wells completed by Sunflower on said Texas County acreage.

5. For the purpose of properly measuring the gas to be sold and delivered hereunder by Sunflower to Cities, Cities agrees to so install, operate and maintain metering equipment of suitable size and design at a suitable location on each drilling unit upon which Sunflower has completed a commercial gas well. Cities is hereby given easement by Sunflower for the installation, operation and maintenance of such metering equipment together with the necessary pipeline to the gas well on each drilling unit on any of Sunflower's such lands, insofar as Sunflower has legal right to grant such easements and Cities is hereby granted the right of removing its such equipment within a reasonable time after the expiration or cancellation hereof. Sunflower shall have the right to inspect said metering equipment in the presence of representatives of Cities and to require tests thereof, and to witness same, but in no event shall Sunflower have the right to alter or in any manner disturb, manipulate or tamper with any of Cities' [fol. 118] such equipment. Cities shall test the metering equipment installed for the purpose of measuring gas delivered hereunder at least once each month or oftener if deemed necessary and Sunflower shall have the right to have a representative present at the tests so made. If, upon any test, any metering equipment is found to be inaccurate by three (3) per cent or more, registration thereof shall be corrected at the rate of such inaccuracy for any period which is definitely known or agreed upon; but in case such period is not definitely known and cannot be agreed upon from other meters or available records, then for any period of incomplete or inaccurate operation the settlement shall be in accordance with the available readings

taken during the last preceding ten (10) days when the meter was registering accurately, and for the first ten (10) days after the meter was restored to accuracy, giving due consideration to the difference in operation of Sunflower's wells, but the period of adjustment shall not exceed thirty (30) days preceding the test and all claims of either party as to the gas delivered or received otherwise than as shown by said meters, must be preferred in writing by such claiming party within ninety (90) days from the commencement of such claimed discrepancy, and all claims of either party hereto concerning either the comparative amount, as related to other wells, or the absolute amount, of gas taken are waived unless corrections or adjustments are made or claimed in writing within said ninety (90) days' period.

The gas delivered hereunder shall be measured at prevailing meter pressures and the volumes thereof shall be computed on a pressure base of sixteen and four-tenths (16.4) pounds per square inch absolute pressure and on a temperature base of sixty (60) degrees Fahrenheit. It is assumed and agreed for the purpose of this contract that the gas delivered hereunder obeys Boyles' Law and the flowing temperatures of the gas in the meter is sixty (60) degrees Fahrenheit; provided, however, either party hereto may install and maintain recording thermometers to record the temperature of the gas flowing through the meters, in which event the arithmetic average of the daily temperatures at each meter for each chart period shall be used in computing the volume of gas measured through such meter during such period.

In the event orifice meters are used for the measurement of gas delivered hereunder by Sunflower to Cities, coefficients shall be based on the basic orifice flow factor as last published and approved by the Gas Measurement Committee of the American Gas Association. It is assumed and [fol. 119] agreed that the values of the Reynolds number factor and the expansion factor are one (1). Specific gravity determinations for the purpose of measurement computation shall be made in accordance with an approved method and the average of these determinations during

each current fiscal month shall be used at the close of that month for calculating the volume of gas delivered hereunder.

6. Cities agrees to pay Sunflower for all gas sold and delivered hereunder the price of nine cents (9¢)* per thousand (1000) cubic feet, on the basis of agreed measurement elsewhere herein recited, through June 22, 1956, and ten cents (10¢)* per thousand (1000) cubic feet from June 23, 1956, to June 22, 1962, inclusive. For all natural gas delivered after June 22, 1962, the price shall be subject to adjustment each six (6) year period as follows; but said adjusted price shall be not less than ten cents (10¢) per thousand (1000) cubic feet:

(a) Not less than six months prior to June 22, 1962, Cities and Sunflower shall endeavor to agree upon a price to be paid by Cities for gas to be sold and delivered during the next six (6) year period.

(b) In the event that the parties hereto shall fail to agree upon said price for the next six (6) year period earlier than four months before June 22, 1962, the determination of such price shall be by arbitration as herein provided.

(i) In the event of such arbitration, the parties hereto shall mutually select a nationally known firm of consulting engineers, experienced in the gas business, and of the highest reputation and standing, and of unimpeachable integrity, which firm shall have no interest in either Cities or Sunflower, or in the production, transportation, or sale of natural gas in the Hugoton or Texas-Panhandle gas fields.

(ii) In the event that the parties hereto cannot agree upon the selection of such a firm as arbitrator, the Senior Federal Judge of the District Court of the United States in the State of Kansas shall be requested to select such a firm to act as such arbitrator hereunder. In event of failure or refusal of such District Judge to act, then either party may

* Handwritten computations above price illegible.

request any member of the United States Circuit [fol. 120] Court of Appeals for the Tenth Circuit to make such a selection. It is recognized that none of said Judges named has any official jurisdiction over said matter, but will act individually in making such selection.

(iii) Upon the selection of such firm as arbitrator as herein provided, said arbitrator shall proceed to determine the fair, just and reasonable price to be paid by Cities during the ensuing six (6) year period and the decision of said arbitrator shall be final and binding upon both parties, in the absence of fraud or bad faith on the part of the arbitrator.

(iv) The arbitrator shall, within thirty (30) days from the date of its appointment, designate a time and a place for a hearing of such statements, evidence, and arguments as the parties may desire to submit, supporting the claims of either party as to the fair, just and reasonable price per thousand (1000) cubic feet of gas to be delivered by Sunflower to Cities during the ensuing six (6) year period. Such arbitrator shall be privileged to seek the assistance of experts and men of practical experience in the natural gas business in its considerations.

(v) The fees of the arbitrator and expenses of arbitration shall be borne one-half by Sunflower and one-half by Cities.

(vi) In the event such arbitrator shall fail to reach a decision in four months after its appointment, such arbitrator shall be discharged and a new arbitrator shall be selected in like manner as if no arbitrator had been chosen.

(c) Not less than six months prior to the end of each succeeding six (6) year period, Cities and Sunflower shall commence negotiations to determine the fair, just and reasonable price to be paid by Cities for gas to be delivered hereunder during the next ensuing six (6) year period; and in the event of failure

to agree upon such price, arbitration shall proceed as hereinabove provided.

[fol. 121] (d) It is expressly stipulated that the delivery of gas by Sunflower under this agreement shall not be interrupted because of delay in the determination of the price applicable to delivery of gas, and the delivery of gas shall continue at the previous effective price. Upon determination of the new price, the price shall be applied retroactively to gas previously delivered in the interim.

(e) If in any fiscal accounting month, as herein defined, the average gross heating value of the gas delivered by Sunflower shall fall below the nine hundred sixty (960) BTUs per cubic foot, the price then applicable hereunder, whether by agreement or by arbitration, to be paid by Cities to Sunflower for gas delivered during such month shall be decreased proportionately to the deficiency in gross heating value below nine hundred sixty (960) BTUs per cubic foot.

7. Cities shall pay Sunflower by check on or before the 25th day of each calendar month following Cities' fiscal month for gas accounting for all gas received from Sunflower during such preceding fiscal month (said fiscal month being from the 23rd day of one month to the 22nd day of the succeeding month inclusive). Said payments by Cities to Sunflower shall be made upon the basis of a monthly statement rendered by Cities to Sunflower at the time of payment for gas delivered hereunder. Sunflower may accept such statement, and the payment based thereon, and in the event the same is found incorrect under the provisions hereof, adjustments and payments shall be made accordingly. It is agreed that Cities shall pay Sunflower for all gas purchased by Cities hereunder and that Sunflower will make settlements for all royalties accruing from such production.

8. The existing conservation, excise or production taxes now assessed by the States of Kansas and Oklahoma shall be paid wholly by Sunflower. Any increase in such taxes

or any new or additional production, severance, gathering, sales, delivery or other excise tax or taxes imposed upon Sunflower by either of said States or any subdivision thereof, or by the Federal Government, in respect to the gas produced by Sunflower for delivery to Cities hereunder shall be borne one-half by Sunflower and one-half by Cities.

9. All of the property and equipment installed by either of the parties hereto, under the terms of this contract shall remain the property of that respective party, and each of the parties hereto shall have the right to remove [fol. 122] its said equipment whenever it is no longer needed to enable such party to perform its obligations to the other party; however, it is understood and agreed that each of the parties hereto assumes as between the parties all of the responsibility for the operation and maintenance of, and the obligations arising out of, the property, machinery and equipment which it installs, and each of the parties hereto holds the other harmless from any and all damages and/or claims for damages of whatsoever kind resulting from the operations, maintenance and reclaim of the property, machinery and equipment which it has installed.

10. Sunflower warrants title to the gas it delivers hereunder and right to sell same and that it is clear of all liens and adverse claims. In case of adverse claims to the title of any gas purchased hereunder or to the land from which it is produced or to any unpaid royalties, Cities may, without otherwise affecting this contract, retain the purchase price thereof (without interest) until such claim is finally determined or until adequate and satisfactory bond to hold it harmless is furnished.

11. Cities shall at no time be required to receive gas from Sunflower at any one of its such wells which has a gross heating value of less than nine hundred fifty (950) British Thermal Units per cubic foot; however, the receipt of gas of lesser BTU content shall not constitute a waiver of Cities' right to reject future deliveries of similar gas. If Cities refuses to accept gas from any well because of

heating value of less than nine hundred fifty (950) BTU per cubic foot for any single period in excess of two (2) months. Sunflower may, at its election, cancel this agreement as to such well and the acreage attributable thereto by so notifying Cities.

Cities shall have the right, when said gas becomes unmerchantable by reason of the hydrogen sulphide content or from any other or different causes affecting adversely the quality of the gas, or when the content of said gas renders the reception or transportation thereof in pipelines owned or operated by Cities hazardous, or difficult or injurious to its property or to the ultimate consumer thereof, to cease taking same until such time as it again become merchantable or the cause rendering the reception, transportation and utilization of said gas hazardous, difficult or injurious as aforesaid are corrected; however, under no circumstances will it be urged that the gas available for delivery hereunder is unmerchantable, hazardous or injurious by reason only of excessive hydrogen sulphide content unless such content exceeds one (1) grain per hundred cubic feet or by reason only of excessive sulphur [fol. 123] content, unless the total sulphur content exceeds twenty (20) grains per hundred cubic feet. Sunflower shall, when said gas becomes unmerchantable or the reception, transportation and utilization thereof becomes hazardous, difficult or injurious as aforesaid, with all reasonable promptness take all reasonable and practicable steps to eliminate and correct the causes rendering such gas unmerchantable.

The unit of volume for determining gross heating value, hydrogen sulphide and sulphur content only shall be one (1) cubic foot of gas saturated with water vapor, at a base temperature of sixty (60) degrees Fahrenheit, and at a pressure of thirty (30) inches of mercury at thirty-two (32) degrees Fahrenheit. The gas to be delivered hereunder is assumed but not guaranteed to have a gross heating value of not less than one thousand (1,000) BTUs per cubic foot.

12. Sunflower agrees to arrange for a telephone and connections to be installed and maintained in its Kansas-

Hugoton field operating headquarters to enable the parties hereto to communicate with each other and Sunflower agrees to promptly notify by telephone the pressure dispatcher of Cities at Wichita, Kansas, or Cities' field representatives whose names, addresses and telephone numbers shall be furnished to Sunflower in writing of any interference affecting the delivery of gas hereunder, and to begin, increase or suspend the delivery of gas hereunder on the orders of said pressure dispatcher or any one of the above authorized representatives of Cities.

13. Cities shall not be bound by any transfer of interest in and to the gas purchased hereunder until it has been furnished with the original or a certified copy of the proper instruments showing clearly such transfer of interest.

14. This contract shall become effective on the date herein first recited and shall continue in force for a period of twenty (20) years after the date of first delivery of gas hereunder, and thereafter so long as natural gas can be delivered hereunder in commercial quantities.

15. All of the terms, covenants and agreements hereof shall run in favor of and the binding upon the parties hereto, their successors and assigns; and shall run with the land above described and the leasehold estates and other interest of the parties therein. This contract is assignable by either party hereto.

16. The agreements and undertakings hereof are subject to valid present and future orders, rules and regulations of duly constituted authorities having jurisdiction.

[fol. 124] 17. In the event of either party hereto being rendered unable, wholly or in part, by force majeure to carry out its obligations under this agreement, it is agreed that on such party giving notice and full particulars of such force majeure in writing or by telegraph to the other party as soon as possible after the occurrence of the cause relied on, then the obligations of the party giving such notice, as far as they are affected by such force majeure, shall be suspended during the continuance of any inability so caused but for no longer period, and such cause shall

as far as possible be remedied with all reasonable dispatch.

The term "force majeure" as employed herein shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints to governments and people, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, partial or entire failure of wells, or any other causes, whether of the kind herein enumerated or otherwise, except financial, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome; such term shall likewise include, (a) in those instances where any party hereto is required to obtain servitudes, rights of way grants, permits or licenses to enable such party to fulfill its obligations hereunder, the inability of such party to acquire, or the delays on the part of such party in acquiring, at a reasonable cost and after the exercise of reasonable diligence, such servitudes, rights of way grants, permits or licenses; and (b), in those instances where any party hereto is required to furnish materials and supplies for the purpose of constructing or maintaining facilities or is required to secure permits or permissions from any governmental agency to enable such party to fulfill its obligations hereunder, the inability of such party to acquire, or the delays on the part of such party in acquiring, at reasonable cost and after the exercise of reasonable diligence, such materials and supplies, permits and permissions.

It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirements that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts by acceding to the demands of opposing [fol. 125] party when such course is inadvisable in the discretion of the party having the difficulty.

IN WITNESS WHEREOF, the parties hereto have executed this instrument in quadruple the date and year first above written.

SUNFLOWER NATURAL GAS COMPANY, INC.

(CORPORATE SEAL)
 (SUNFLOWER NATURAL)
 (GAS COMPANY)

By /s/ K. A. Spencer
 President

Attest:

/s/ Eugene W. Worgan
 Asst. Secretary

CITIES SERVICE GAS COMPANY

(CORPORATE SEAL)
 (CITIES SERVICE)
 (GAS COMPANY)

By /s/ Geo. H. Baird
 Vice President

Attest:

/s/ A. W. Levan
 Asst. Secretary

[fol. 126]

EXHIBIT E TO ANSWER

GAS PURCHASE CONTRACT

THIS CONTRACT made and entered into this 29th day of September, 1949, by and between WESTERN NATURAL GAS COMPANY, a Delaware corporation, hereinafter referred to as "Seller", and CITIES SERVICE GAS COMPANY, a Delaware corporation, hereinafter referred to as "Buyer".

WITNESSETH:

WHEREAS, Seller owns certain gas rights in approximately 35,000 acres of land in Grant and Stanton Counties, Kansas, which said land is designated on the map hereto attached, marked Exhibit A, and hereby made a part hereof for all purposes, has drilled approximately fifteen wells thereon, contemplates drilling approximately thirty-nine additional wells thereon, and desires to market the gas produced therefrom, and

WHEREAS, Buyer owns and operates an interstate gas pipe line system, part of which extends from the Kansas-Hugoton Field, in which said land is located, to Buyer's market area in the vicinity of Kansas City, Missouri, and Buyer desires to purchase Seller's gas produced from said land subject to the prior right of El Paso Natural Gas Company under the agreement dated as of May 1, 1947, referred to in Article XIX hereof:

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree with each other as follows:

ARTICLE I

Section 1. Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller gas produced from said land in the quantity, at the time and places, upon the terms and for the consideration hereinafter stated.

ARTICLE II

Section 1. Subject to the terms and provisions of this agreement, Buyer shall purchase and receive from Seller

gas produced from Seller's wells situated on said land ratably with all wells from which Buyer purchases or produces gas in the Kansas-Hugoton Field. "Ratably", as that term is used in the preceding sentence, means in proportion to well allowables lawfully fixed and determined by the State Corporation Commission of Kansas or other regulatory body having jurisdiction, and if well allowables shall cease to be fixed by said Commission or other regulatory body, then the last method used by said Commission or other regulatory body in determining allowables shall be applied by the parties hereto to determine "allowables" for the purposes of this Article, and "ratably" shall then mean in proportion to such "allowables".

[fol. 127]

ARTICLE III

Section 1. The gas to be delivered hereunder shall be merchantable natural gas as produced from the wells, and Seller shall not be required to subject said gas to treating or other processes. Seller may at its election subject said gas to mechanical separation for the recovery of liquid hydrocarbons but shall not remove any liquid or lighter hydrocarbons therefrom by any other process.

Section 2. The gas to be delivered hereunder shall have a gross heating value of not less than 960 British Thermal Units per cubic foot. The receipt by Buyer of gas of a lower gross heating value than 960 British Thermal Units per cubic foot shall not constitute a waiver of Buyer's right to reject future deliveries of similar gas. If the British Thermal Unit content of the gas delivered from any of Seller's wells shall fall below 975 British Thermal Units per cubic foot in any fiscal month, the price to be paid by Buyer to Seller for the gas delivered from such well or wells during such fiscal month shall be reduced by a fraction, the numerator of which shall be the average deficiency in the total British Thermal Units per cubic foot below 1000, and the denominator of which shall be 1000. Such reduction in price shall be reflected on the statement rendered for the particular fiscal month involved and the net amount so determined shall be the total amount to be paid by Buyer for such gas for such fiscal month.

Section 3. The gas to be delivered hereunder shall be sweet gas and shall not contain more than $\frac{1}{2}$ grain of hydrogen sulphide per 100 cubic feet and shall not contain more than 10 grains of total sulphur per 100 cubic feet. Buyer may, without liability to Seller, refuse deliveries of gas from any well during any period when the gas from such well does not meet the specifications required by this Section.

Section 4. The gas to be delivered hereunder shall be commercially free of water, crude oil, hydrocarbons in liquid form, dust, gums, oxygen, impurities and other objectionable substances, and Seller shall use every reasonable effort to keep said gas free from such liquids and objectionable substances, but shall not be required to install and operate dehydration facilities. The carbon dioxide content of the gas shall not exceed 1% by volume.

Section 5. The unit of volume for determining gross heating value, hydrogen sulphide content and sulphur content, shall be one cubic foot of gas saturated with water vapor at a base temperature of 60 degrees Fahrenheit and at a pressure of 30 inches of mercury at 32 degrees Fahrenheit.

Section 6. Anything contained in this agreement to the contrary notwithstanding, should Seller be unable to deliver to Buyer under the provisions of this agreement from any [fol. 128] well gas of the quality as required by this Article and Buyer should refuse the gas from such well and not accept deliveries thereof for any single period in excess of two (2) months, Seller may, at its election, cancel this agreement as to such well and the acreage attributable thereto by so notifying Buyer.

ARTICLE IV

Section 1. The delivery point of the gas to be sold hereunder shall be designated by Seller, and each shall be near the wellhead of the particular well or wells it is to serve.

ARTICLE V

Section 1. The sales unit of the gas deliverable under this agreement shall be 1000 cubic feet.

Section 2. The volumes of gas delivered by Seller hereunder from each of Seller's wells shall be measured at the orifice meter or meters of Buyer at each point of delivery, which meters, together with any collateral equipment of Buyer necessary for measuring said gas, Buyer agrees to install, maintain and operate at or near each delivery point; provided that if any such meter or collateral equipment be located at some place other than the delivery point, Seller may require their removal to the delivery point if necessary because of lease requirements or because of leakage between the delivery point and the then existing measuring point. Orifice meter coefficients shall be based on the basic orifice flow factor as last published and approved by the Gas Measurement Committee of the American Gas Association. It is agreed that the values of the Reynolds number factor and the expansion factor shall be assumed to be one (1).

Section 3. The unit of volume for the purpose of measurement shall be one cubic foot of gas at a temperature base of 60 degrees Fahrenheit and at a pressure of 16.4 pounds per square inch absolute.

Section 4. For the purposes of this contract it shall be assumed that the temperature of the gas flowing through the meters is 60 degrees Fahrenheit; provided, however, that Seller may, at its option, install not more than ten recording thermometers at such points of metering as shall permit the recording of the temperature of a portion of the gas being delivered hereunder, and if any such recording thermometers are installed the arithmetical average of the hourly temperature recorded during each day shall be used to make corrections in volume computations. If Seller elects to install any such recording thermometers, Buyer shall change and calculate the temperature charts thereon and will promptly, if the same comes to Buyer's attention, [fol. 129] notify Seller of any defect in or damage to said thermometers or of any failure of said thermometers to register accurately.

Section 5. The specific gravity of the gas flowing through the meters shall be determined by joint test each month as near the first of the month as practicable by the use of an

Edwards balance or such other method as may be mutually agreed upon. Such tests shall determine the specific gravity to be used in computations for the fiscal month when such tests are made.

Section 6. Corrections shall be made for deviation of the gas from Boyle's Law at the pressures and temperatures under which the gas is delivered by Seller to Buyer. In computing the correction for deviation from Boyle's Law, tables from Bulletin TS-402 (1947) of the California Natural Gasoline Association, or equivalent method agreed upon, shall be used.

Section 7. Seller may install, maintain and operate check meters and collateral equipment to be installed so as to not interfere with the operation of the facilities through which Buyer receives gas at or near the delivery points. Buyer shall have access to such check measuring equipment at all times during business hours, but the reading, calibrating and adjustment thereof and the changing of charts shall be done only by the employees or agent of Seller.

Section 8. From time to time and at least once a month, on a date as near the first of the month as practicable, the accuracy of Buyer's meters shall be verified in the presence of representatives of both Seller and Buyer, and the parties shall jointly observe any adjustments which are made to such meters. If either party at any time shall notify the other that it desires a special test of any meter, the other party shall cooperate to secure immediate verification of the accuracy of the meter and joint observation of any adjustments. Each party shall give to the other notice of the date of all tests in order that the other party may conveniently have its representative present.

Section 9. Any meter found on test to register in an amount not more than 2% fast or slow shall be deemed to be correct, but the same shall promptly be adjusted to register accurately. In the event any meter upon test proves to more than 2% fast or slow, then any previous readings of such meter shall be corrected to zero error for any period which is known definitely or agreed upon, but in case the period is not known definitely or agreed upon, then for a period extending back $\frac{1}{2}$ of the time elapsed since the date of

the last test. If for any reason any meter is out of service or out of repair so that the volume of gas purchased cannot [fol. 130] be ascertained or computed from the reading thereof, the volume of gas purchased during the period such meter is out of service or out of repair shall be estimated and agreed upon by the parties hereto on the basis of the best data available, using the first of the following methods which is feasible:

- (a) By using the registration of Buyer's check meter, if installed and accurately registering;
- (b) By correcting the error if the percentage of error is ascertainable by calibration test or mathematical calculation;
- (c) By estimating the quantity of deliveries by comparison with deliveries during preceding periods under similar conditions when the meter was registering accurately.

Section 10. The gross heating value of the gas in British Thermal Units per cubic foot shall be determined from time to time by Buyer at intervals of not less than three (3) months, or by means of a recording calorimeter of the Thomas type, at the option of Buyer, to be installed and operated at Buyer's expense. Seller shall have the right to be represented at and to participate in all tests of the gas for such determination and in all tests of said recording calorimeter, if installed.

Section 11. Seller shall have the right to be represented at and to participate in all tests of gas delivered hereunder or of any equipment used in measuring or determining the nature or quality of such gas and to inspect, at any time during business hours, any and all equipment of Buyer used for the measurement or determination of the nature or quality of gas delivered hereunder.

Section 12. From time to time and at least once a month on a date as near the first of the month as practicable the accuracy of Buyer's collateral equipment and Seller's recording thermometers, if installed, shall be verified in the presence of representatives of both Seller and Buyer and the parties shall jointly observe any adjustments which are

made in such equipment. If, upon any test, any such equipment shall be found in error, such equipment shall be adjusted at once to read accurately within the limits prescribed by the manufacturer.

Section 13. Each party hereto shall cause to be preserved for a period of at least two (2) years all test data, charts and other similar records.

Section 14. Subject to the other provisions of this agreement, Seller shall deliver gas to Buyer in such volumes and at such times as may be requested by Buyer up to the delivery capacity of Seller's wells. Buyer shall regulate the flow of gas from Seller's wells into its gathering system by means of facilities installed by Buyer. Buyer shall notify Seller of any condition adversely affecting the delivery of gas from any of Seller's wells in order that Seller may proceed to take such corrective measures as it may [fol. 131] deem appropriate. Buyer shall not regulate any of Seller's well equipment, and the well equipment of Seller shall be regulated and handled solely by the employees and agents of Seller.

ARTICLE VI

Section 1. The price at which gas delivered hereunder shall be paid for by Buyer shall be 8¢ per 1000 cubic feet, measured and calculated as herein provided.

ARTICLE VII

Section 1. On or before the 25th day of each calendar month after the beginning date of the term of this contract Buyer shall render to Seller a statement showing the amount of gas delivered hereunder during the fiscal month ending during the preceding calendar month, together with its check in the amount due for such gas and with sufficient information to explain and support any adjustment made by Buyer with respect to the value of the gas delivered in determining the amount stated to be due. The fiscal month herein referred to shall be from the 23rd day of one calendar month to the 22nd day, inclusive, of the next succeeding calendar month.

Section 2. Should Buyer fail to pay the full amount due Seller when it is due, interest thereon shall accrue at the rate of six per cent (6%) per annum from the date when such payment is due until the same is paid.

Section 3. Each party shall have the right at all reasonable times to examine the books, records and charts of the other party to the extent necessary to verify the accuracy of any statement, charge, computation or demand made under or pursuant to any of the provisions of this contract.

ARTICLE VIII

Section 1. Buyer at its sole cost and expense shall construct gathering lines and facilities to receive and measure the gas to be sold hereunder, and Seller hereby grants unto Buyer for such purpose and only insofar as it may have the legal right so to do, and easement or easements over and across the leases and units owned by it. Buyer shall promptly begin the construction of said gathering lines and facilities and agrees to make connections to and begin receiving gas from each of Seller's then completed wells within six months from the date of this agreement. Thereafter as each of Seller's wells are completed or the early completion thereof is contemplated, Seller shall designate to Buyer the location of each such well which has been or will be completed and the delivery point therefor, and Buyer agrees to make connection and begin receiving gas from any such well at the delivery point so designated within two months from the designation thereof by Seller.

[fol. 132] Section 2. This contract shall become effective as of the date hereof and shall continue in force thereafter until the expiration of ten years from the date of the first delivery of gas from Seller to Buyer hereunder.

Section 3. If when the term of this contract expires Buyer and Seller do not enter into another contract for the purchase and sale of gas from Seller's said properties (the price for gas in which contract, if made, shall be not less than 9¢ per 1000 cubic feet), seller shall purchase from Buyer all of the gathering lines and facilities provided to be constructed by Buyer in Section 1 of this Article, save and except Buyer's main gathering line extending east from the north and south section line located two (2) miles

east of and parallel with the range line between Ranges 37 west and 38 west, Grant County, Kansas, and shall pay to Buyer therefor the total cost of constructing such facilities less depreciation and amortization figured at the rate of three and one-half per cent ($3\frac{1}{2}\%$) per annum from the date of construction. Buyer shall submit to Seller for Seller's prior approval all job order estimates pertaining to the construction of said gathering lines and facilities and shall inform Seller promptly of the cost of the initial lines and facilities and of the additions thereto as the same are made from time to time.

ARTICLE IX

Section 1. Seller shall have the right to sell or otherwise dispose of any gas available for sale which is not being taken by Buyer so long as such sale or disposal does not interfere with deliveries to Buyer or abrogate any of Buyer's rights hereunder.

Section 2. If Buyer shall fail to receive from Seller in any single contract year at least eighty per cent (80%) of the quantity of gas which Seller could have lawfully produced for delivery under this contract during such contract year in accordance with the allowables applicable to Seller's wells which are then committed to this contract, Seller may, by written notice to Buyer given within 120 days from the end of such contract year, withdraw and release from this contract an amount of acreage to be determined by multiplying the number of acres then committed to this contract by a fraction, the numerator of which is such deficiency of take under eighty per cent (80%) and the denominator of which is eighty per cent (80%) of the total amount of gas which Seller could have so lawfully produced. The acreage so withdrawn and released from this contract shall be that which is designated by Seller in its notice to Buyer. The rights granted Seller in this Section may be exercised by Seller as often and whenever during any contract year any such deficiency occurs and regardless of whether sales of gas from Seller's wells are being made to others.

Section 1. Seller hereby excepts from this contract and expressly reserves unto Seller and Seller's successors and assigns, the following rights and gas sufficient to satisfy such rights:

- (a) The right to deliver to the lessors in any of the leases or units upon which Seller's wells may be situated sufficient gas to meet the requirements of lessee's obligations under such leases to furnish gas to such lessors;
- (b) The right to use from said leases and units, at Seller's option, all of such gas as Seller may need for the development and operation thereof and the development and operation of Seller's properties situated in the vicinity thereof, including, but not limited to, the use of gas for fuel in drilling;
- (c) The right to sell to others than Buyer, free from the terms of this agreement, all gas not used by Buyer hereunder produced from Seller's properties prior to the date of the first deliveries of gas under this agreement;
- (d) The right to sell to others than Buyer, free from the terms of this agreement, gas to be used for farming operations conducted on or near Seller's leases and units;
- (e) The right, as between Buyer and Seller, to retain and dispose of (free from any and all claims by Buyer) any and all liquids recovered by Seller by mechanical separation from gas prior to its delivery to Buyer;
- (f) The right to operate the properties covered by this agreement, free from any and all control by Buyer, in such manner as Seller, in its sole discretion, deems advisable, including, without limitation, the right to drill new wells, to repair or rework old wells, to renew or extend in whole or in part, any lease or unit covered by this agreement and to abandon any well or surrender, release or terminate any lease not

deemed by Seller capable under normal methods of operation of producing gas in commercial quantities;

- (g) The right from time to time to alter any unit by increasing or decreasing the surface acreage contained therein, or to pool or combine any unit or any part of any unit with other properties owned by Seller or others or to include in any unit any interest in the lands covered by such unit not theretofore included in such unit, or to remove any lease or any part thereof from any unit, or to make any other change in any unit deemed necessary by Seller, and in the event any such change or alteration is made in any unit, this agreement shall continue to apply to the interest of Seller in the property described and referred to herein and shall extend and apply to the interest of Seller in the newly formed property to the extent that such interest is derived from the property described herein. Likewise, Seller shall have the right from time to time to pool and combine any lease or any part thereof with other properties owned by Seller or others, in which event this agreement shall extend and apply to the interest of Seller in the newly formed property to the extent that such interest is derived from the property described herein.

[fol. 134]

ARTICLE XI

Section 1. The price set out above is based on the assumption that every tax on gas or on the production, severance, gathering, transportation, handling, sale or delivery of gas or upon the right or privilege to produce, sever, gather, transport, handle, sell or deliver gas in effect at the time of the execution of this agreement shall remain unchanged during the term hereof. The term "tax" as used in this Article shall mean any tax (other than ad valorem or income taxes), license, fee or charge levied, assessed or made by any governmental authority on the gas itself or on the act, right or privilege of the production, severance, gathering, transportation, handling, sale or delivery of gas which is based on the volume or value of the gas in

question. The term "additional tax" as used in this article shall mean the sum of any increase or increases in any such tax now in effect, or any new tax or taxes hereafter imposed.

Buyer shall reimburse Seller for one-half ($\frac{1}{2}$) of any additional tax paid by Seller on the gas delivered hereunder during the term of this contract, and if the presently existing rate of any tax now in effect be decreased or discontinued, Seller shall credit Buyer with one-half ($\frac{1}{2}$) of the saving effected by Seller on the gas delivered hereunder by virtue of such decrease or discontinuance.

For the purpose of determining the reimbursement to be made by Buyer to Seller or the credit to be given to Seller by Buyer hereunder, any tax paid by any subsidiary or affiliate of Seller and any tax which Seller under contractual obligation refunds to the person or corporation paying such tax shall be considered to have been paid by Seller.

ARTICLE XII

Section 1. Seller warrants title to the gas to be delivered hereunder and its right to sell the same and that the same is clear of all liens and adverse claims. In case of adverse claims to the title of any gas produced hereunder or to the land from which it is produced, Buyer may, without otherwise affecting this contract, retain the purchase price of the gas in question (without interest) until such claim is finally determined or until adequate and satisfactory bond to hold it harmless is furnished.

ARTICLE XIII

Section 1. Neither party shall be liable for damages to the other for any act, omission or circumstance occasioned by, or in connection with or consequence of, any acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, sabotage, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, floods, storms, fires, washouts, arrests and restraints of [fol. 135] rulers and peoples, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, temporary failure of gas supply, well blowouts, craterings, and

the binding order of any court or governmental authority; or any other cause, whether of the kind herein enumerated or otherwise, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome; but provided, however, that the settlement of strikes or lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any force majeure shall be remedied with the exercise of diligence shall not require the settlement of strikes or lockouts by acceding to the demands of opposing parties when such course is inadvisable in the discretion of the party having the difficulty.

Such causes or contingencies affecting the performance of this agreement by any party hereto, however, shall not relieve such party of liability in the event of its concurring negligence or in the event of its failure to use diligence to remedy the situation and remove the cause in any adequate manner and with all reasonable dispatch, nor shall such causes or contingencies affecting the performance of this agreement relieve any party hereto from its obligations to make payments of amounts then due hereunder, nor shall such causes or contingencies relieve any party of liability unless such party shall give notice and full particulars of the same in writing or by telegraph to the other party as soon as possible after the occurrence relied on.

ARTICLE XIV.

Section 1. This agreement is subject to all present and future laws and valid orders, rules and regulations of any regulatory body having jurisdiction.

ARTICLE XV.

Section 1. No waiver by either Seller or Buyer of any one or more defaults by the other in the performance of any of the provisions of this contract shall operate or be construed as a waiver of any other or further default or defaults, whether of a like or different character.

ARTICLE XVI

Section 1. All notices, statements and other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been effectively given when mailed by United States mail, postage prepaid, and addressed to the respective parties as follows:

Western Natural Gas Company
2001 National Standard Building
Houston 2, Texas

[fol. 136]

Cities Service Gas Company
First National Bank Building
Oklahoma City, Oklahoma

Notices of change of address of either of the parties shall be given in writing to the other in the manner aforesaid and shall be observed in the giving of all future notices, statements or other communications required or permitted to be given hereunder.

ARTICLE XVII

Section 1. Should the Federal Power Commission or any successor agency assuming all or any portion of the present functions of the Federal Power Commission or any other body or agency of the Federal Government assume or assert jurisdiction over the sale and delivery of gas under this agreement or the price to be paid therefor, Seller may at any time after the expiration of ninety (90) days thereafter cancel this agreement without further liability on the part of either Buyer or Seller except that Seller shall purchase the gathering lines and facilities of Buyer under the same terms and conditions as are contained in Section 3 of Article VIII of this agreement.

ARTICLE XVIII

Section 1. This contract is subject to the prior right of El Paso Natural Gas Company to purchase from Seller the gas produced from said land pursuant to that certain agreement covering the purchase and sale of gas between

Seller and the said El Paso Natural Gas Company, dated as of May 1, 1947, and Seller shall not be liable to Buyer in the event of any exercise by the said El Paso Natural Gas Company of its rights under said agreement.

ARTICLE XIX

Section 1. This agreement shall bind and benefit the successors and assigns of the respective parties hereto; provided that no conveyance or transfer of any interest of either party shall be binding upon the other party until such other party has been furnished with written notice and with a true copy of such conveyance or transfer; provided, further, that either party hereto may assign its right, title and interest in, to and under this agreement to a Trustee or Trustees, individual or corporate, as security for bonds or other obligations or securities without such Trustee or Trustees assuming or becoming in any respect obligated to perform the obligations of the assignor under this agreement, and if any such Trustee be a corporation, without it being required to qualify to do business in the State of Kansas.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate originals as of the day and year first above written.

[fol. 137]

WESTERN NATURAL GAS COMPANY

By J. V. Cowan
Vice President

ATTEST:

By Henry O. Weaver
Secretary

CITIES SERVICE GAS COMPANY

By Geo. H. Baird
Vice President

ATTEST:

By A. W. Levan
Asst. Secretary

[fol. 138]

[File endorsement omitted]

Acknowledgment of service (omitted in printing).

[fol. 139]

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Civil Action No. 671 1958

CITIES SERVICE GAS COMPANY, a corporation, Plaintiff,

v.

THE TEXAS COMPANY, a corporation, Defendant.

DEFENDANT'S REQUESTS FOR ADMISSIONS BY PLAINTIFF
—Filed November 21, 1958—

Defendant requests pursuant to Rule 36 of this Court that within ten days after service hereof plaintiff make the following admissions for the purpose of this action only and subject to all objections as to admissibility which may be interposed at trial:

1. (a) That the "Gas Purchase Contract" consisting of ten pages and attached to the answer herein as a part of Exhibit A thereof, constitutes a complete and accurate copy of the "Contract dated June 16, 1949," referred to in Paragraph 3(A) of the complaint herein, exclusive of exhibits and modifications and amendments thereto.

(b) That the writings attached hereto as Exhibits A and B hereof constitute accurate copies of exhibits to or amendments or modifications of the "Contract dated June 16, 1949," referred to in paragraph 3(A) of the complaint herein.

(c) That the letter attached to the answer herein as a part of Exhibit A thereof is a complete and accurate copy of an amendment to the "Contract dated June 16, 1949," referred to in paragraph 3(A) of the complaint herein.

2. (a) That the writing attached to the answer herein as Exhibit B thereof is a complete and accurate copy of the "Letter dated December 17, 1951," referred to in paragraph 3(B) of the complaint herein.

[fol. 140] (b) That the writing attached to the answer herein as Exhibit C thereof is a complete and accurate copy of the "gas purchase contract between Sunflower Natural Gas Company, Inc. and plaintiff dated January 10, 1950," referred to in paragraph 3(B) of the complaint herein.

3. (a) That the writing attached to the answer herein as Exhibit D thereof is a complete and accurate copy of the "Letter dated December 20, 1951," referred to in paragraph 3(C) of the complaint herein.

(b) That the writing attached to the answer herein as Exhibit E thereof is a complete and accurate copy of the "contract between Western Natural Gas Company and plaintiff dated September 29, 1949," referred to in paragraph 3(C) of the complaint herein.

4. (a) That, without regard to the case in the United States Supreme Court referred to in paragraph 6 of the complaint herein, the order of the Kansas State Corporation Commission referred to in paragraph 4 of the complaint herein was never judicially determined to be invalid or ineffective.

(b) That the Kansas State Corporation Commission never modified, reversed, set aside, or rescinded the order referred to in paragraph 4 of the complaint herein.

5. (a) That on February 18, 1949, in its Docket No. 35,154-C (C-1868), the Kansas State Corporation Commission promulgated an order requiring that all persons, firms, or corporations taking gas from the Kansas-Hugoton Field pay or attribute thereto a minimum price of 8¢ per M.c.f. after March 1, 1949.

(b) That the Kansas State Corporation Commission did not, prior to February 21, 1951, modify, reverse, set aside or rescind the order referred to in paragraph 5(a) hereof.

[fol. 141] (c) That the order referred to in paragraph 5(a) hereof was never judicially determined to be invalid or ineffective.

(d) That the writing attached hereto as Exhibit C is a complete and accurate copy of an order of the Kansas

State Corporation Commission promulgated on February 21, 1951, in its Docket No. 35,154-C (C-1868).

(e) That the Kansas State Corporation Commission did not, prior to January 1, 1954, modify, reverse, set aside or rescind the order referred to in paragraph 5(d) hereof.

(f) That the order referred to in paragraph 5(d) hereof was never judicially determined to be invalid or ineffective.

6. (a) That the writing attached to the answer herein as Exhibit F thereof is a complete and accurate copy of an Order entered by the Kansas State Corporation Commission in its Docket No. 34,780-C (C-1825) on May 20, 1953.

(b) That after its effective date the order referred to in paragraph 6(a) hereof was applied by the Kansas State Corporation Commission to require quantities of natural gas taken from the Kansas-Hugoton Field to be computed on a pressure base of 14.65 p.s.i.a., deviated.

(c) That the order referred to in paragraph 6(a) hereof was never judicially determined to be invalid or ineffective.

(d) That the Kansas State Corporation Commission has never modified, reversed, set aside, or rescinded the order referred to in paragraph 6(a) hereof.

7. (a) That the writing attached hereto as Exhibit D is a complete and accurate copy of a letter written by R. L. Morton of Cities Service Gas Company to defendant dated July 17, 1953.

[fol. 142] (b) That R. L. Morton was authorized by plaintiff to write the letter referred to in paragraph 7(a) hereof on behalf of plaintiff.

(c) That the writing attached hereto as Exhibit E is a complete and accurate copy of a letter written by G. C. Roth of Cities Service Gas Company to defendant dated August 25, 1953.

(d) That G. C. Roth was authorized by plaintiff to write the letter referred to in paragraph 7(c) hereof on behalf of plaintiff.

(c) That the letter referred to in paragraph 7(c) hereof is the same letter referred to as "dated August 25, 1953" in the quotation alleged in paragraph 5 of the complaint herein to have been set forth on the voucher checks issued by plaintiff to defendant.

8. That prior to July 16, 1954, the Federal Power Commission had not exercised any authority or jurisdiction under the Natural Gas Act, 15 U.S.C. §§ 717a-717w, over the sales by defendant to plaintiff referred to in the complaint.

9. (a) That the writing attached hereto as Exhibit F is a complete and accurate copy of Order No. 174 issued on July 16, 1954, by the Federal Power Commission.

(b) That the writing attached hereto as Exhibit G is a complete and accurate copy of Order No. 174-A issued on August 6, 1954, by the Federal Power Commission.

(c) That the writing attached hereto as Exhibit H is a complete and accurate copy of the "Order Modifying In Part Order No. 174-A" issued on September 24, 1954, by the Federal Power Commission.

[fol. 143] (d) That the writing attached hereto as Exhibit I is a complete and accurate copy of the Order No. 174-B issued on December 17, 1954, by the Federal Power Commission.

10. (a) That some of the sales of natural gas under each of the contracts referred to in paragraph 3 of the complaint herein made by defendant to plaintiff were sales "in interstate commerce of natural gas for resale," within the meaning of the Natural Gas Act, 15 U.S.C. §§ 717a-717w.

(b) That in making the sales referred to in paragraph 10(a) hereof defendant was an "independent producer" of natural gas as defined in section 154.91 of the Regulations under the Natural Gas Act prescribed by Order No. 174-A of the Federal Power Commission.

11. That 11¢ per M.c.f. at 14.65 p.s.i.a., deviated, was the amount actually being paid by plaintiff to defendant,

on and immediately prior to June 7, 1954, for the sales of natural gas referred to in the complaint.

12. (a) That the writing attached hereto as Exhibit J is a complete and accurate copy of a letter from O. R. Stites of Cities Service Gas Company to defendant dated November 15, 1954.

(b) That O. R. Stites was authorized by plaintiff to write the letter referred to in paragraph 12(a) hereof on behalf of plaintiff.

(c) That the writing attached hereto as Exhibit K is a complete and accurate copy of a letter of Robert N. Berry of Cities Service Gas Company to defendant dated May 13, 1955.

(d) That Robert N. Berry was authorized by plaintiff to write on behalf of plaintiff the letter referred to in paragraph 12(c) hereof.

[fol. 144] 13. (a) That by an order in its Docket No. G-4824, issued December 5, 1955, the Federal Power Commission granted a certificate of public convenience and necessity for the sales by defendant to plaintiff of natural gas under what is referred to in the complaint as the Columbian Contract.

(b) That the certificate of public convenience and necessity referred to in paragraph 13(a) hereof has not heretofore been withdrawn, revoked, or rescinded or determined to be invalid or ineffective.

(c) That defendant accepted the certificate of public convenience and necessity referred to in paragraph 13(a) hereof on the conditions referred to in that certificate.

14. (a) That the documents referred to in paragraph 1 hereof plus those attached hereto as Exhibit L constitute complete and accurate copies of writings on file with the Federal Power Commission pertaining to the price for sales of natural gas to plaintiff under what is referred to in the complaint as the Columbian Contract.

(b) That the documents referred to in paragraph 14(a) hereof which were filed by defendant were filed in response

to regulations of the Federal Power Commission, as revised by that Commission's Order No. 174 and its amendments, and the Natural Gas Act, 15 U.S.C. §§ 717a-717w, or in response to requests of the Federal Power Commission.

(e) That the documents referred to in paragraph 14(a) hereof have not heretofore been withdrawn or rejected or determined to be invalid or ineffective.

[fol. 145] (d) That plaintiff was furnished with copies of the writings referred to in paragraph 14(a) hereof filed by defendant with the Federal Power Commission at the time they were filed with the Federal Power Commission.

(e) That the writings referred to in paragraph 14(a) hereof were a matter of public record and available for the inspection of plaintiff at any time after they were filed with the Federal Power Commission.

15. (a) That the Federal Power Commission granted a certificate of public convenience and necessity for the sales to plaintiff of natural gas under what is referred to in the complaint as the Sunflower Contract.

(b) That the certificate of public convenience and necessity referred to in paragraph 15(a) hereof has not heretofore been withdrawn, revoked, or rescinded or determined to be invalid or ineffective.

(c) That the party to whom it was issued accepted the certificate of public convenience and necessity referred to in paragraph 15(a) hereof on the conditions referred to in that certificate.

16. (a) That writings pertaining to the price for sales of natural gas to plaintiff under what is referred to in the complaint as the Sunflower Contract were filed by Cabot Carbon Company with the Federal Power Commission in response to regulations of the Federal Power Commission, as revised by that Commission's Order No. 174 and its amendments, and the Natural Gas Act, 15 U.S.C. §§ 717a-717w, or in response to requests of the Federal Power Commission.

[fol. 146] (b) That the documents referred to in paragraph 16(a) hereof have not heretofore been withdrawn, revoked or rescinded, or determined to be invalid or ineffective.

(c) That plaintiff was furnished with copies of the writings referred to in paragraph 16(a) hereof filed with the Federal Power Commission at the time they were filed with that Commission.

(d) That the writings referred to in paragraph 16(a) hereof were a matter of public record and available for the inspection of plaintiff at any time after they were filed with the Federal Power Commission.

17. (a) That the Federal Power Commission granted a certificate of public convenience and necessity for the sales to plaintiff of natural gas under what is referred to in the complaint as the Western Contract.

(b) That the certificate of public convenience and necessity referred to in paragraph 17(a) hereof has not heretofore been withdrawn, revoked, or rescinded or determined to be invalid or ineffective.

(c) That the party to whom it was issued accepted the certificate of public convenience and necessity referred to in paragraph 17(a) hereof on the conditions referred to in that certificate.

18. (a) That writings pertaining to the price for sales of natural gas to plaintiff under what is referred to in the complaint as the Western Contract were filed by Western Natural Gas Company with the Federal Power Commission in response to regulations of the Federal Power Commission, as revised by that Commission's Order No. 174 and its amendments, and the Natural Gas Act, 15 U.S.C. §§ 717a-717w, or in response to requests of the Federal Power Commission.

[fol. 147] (b) That the documents referred to in paragraph 18(a) hereof have not heretofore been withdrawn, revoked or rescinded, or determined to be invalid or ineffective.

(c) That plaintiff was furnished with copies of the writings referred to in paragraph 18(a) hereof filed with the Federal Power Commission at the time they were filed with that Commission.

(d) That the writings referred to in paragraph 18(a) hereof were a matter of public record and available for the inspection of plaintiff at any time after they were filed with the Federal Power Commission.

19. (a) That plaintiff did not at any time contest, protest, or object, in any manner provided by the Natural Gas Act, 15 U.S.C. §§ 717a-717w, or the regulations of the Federal Power Commission promulgated thereunder, to the Federal Power Commission certificate of public convenience and necessity and rate filings for the sales of natural gas to plaintiff referred to in the complaint.

(b) That plaintiff did contest, protest, or object, in a manner provided by the Natural Gas Act, 15 U.S.C. §§ 717a-717w, or the regulations of the Federal Power Commission promulgated thereunder, to a Federal Power Commission certificate of public convenience and necessity for or rate filings for sales of natural gas from the Kansas-Hugoton Field after June 7, 1954, made to it by an independent producer or producers of natural gas other than defendant.

20. (a) That plaintiff could have applied for a stay or suspension of the order of the Kansas State Corporation Commission referred to in paragraph 4 of the complaint herein during the pendency of review proceedings initiated by plaintiff to determine the validity or effect of that order but that plaintiff did not apply for such a stay or suspension.

[fol. 148] (b) That the sanctions referred to in paragraph 4 of the complaint herein for violation of the order of the Kansas State Corporation Commission there referred to applied only if that order of the Kansas State Corporation Commission was valid.

(c) That the sanctions referred to in paragraph 4 of the complaint herein for violation of the order of the Kansas State Corporation Commission there referred to also applied to violations of the orders entered by the Kansas State Corporation Commission in its Docket No. 35,154-C (C-1868) on February 18, 1949, and February 21, 1951.

(d) That the sanctions referred to in paragraph 4 of the complaint herein for violation of the order of the Kansas State Corporation Commission there referred to also applied to violations of the order entered by the Kansas State Corporation Commission in its Docket No. 34,780-C (C-1825) on May 20, 1953.

Morris, Nichols, Arsht and Tunnell, James M. Tunnell, Jr., Andrew B. Kirkpatrick, Jr., Attorneys for Defendant, 3000 duPont Building, Wilmington, Delaware.

Of Counsel: Paul F. Schlicher, 24th Floor Chrysler Bldg., 135 East 42nd Street, New York, New York.

[fol. 149]

EXHIBIT A TO DEFENDANT'S REQUESTS FOR
ADMISSIONS BY PLAINTIFF

MOSCOW BLOCK

EXHIBIT "A"

Lease File No.:	Description:	Number of Acres:	Lease Exp. Date:
114527	NE $\frac{1}{4}$ except r/w of Dodge City and Cimarron Valley Railroad as now loc. over SE cor. of NE $\frac{1}{4}$; and that tract or parcel of land described as the SE $\frac{1}{4}$ lying NW of railroad right-of-way as now located over the SE $\frac{1}{4}$, Sec. 27-31S-36W	$\frac{1}{2}$ of 239.81	11-29-49
114538	NE $\frac{1}{4}$ subject to r/w of Dodge City and Cimarron Valley Railroad as now loc. over SE cor. of NE $\frac{1}{4}$; and that tract or parcel of land des. as the SE $\frac{1}{4}$ lying NW of railroad right-of-way as now loc. over the SE $\frac{1}{4}$, Sec. 27-31S-36W	$\frac{1}{2}$ of 239.81	11-29-56
114521	NW $\frac{1}{4}$ Sec. 27-31S-36W, above 3400 feet	160	3-30-57
114500	SW $\frac{1}{4}$ Sec. 27-31S-36W	160	11-7-52
114510-A	SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 27-31S-36W	$\frac{1}{2}$ of 40	12-2-49
114510-F	All that portion of SE $\frac{1}{4}$, Sec. 27, lying S. and E. of r/w of D. C. & C. V. Railway Co., ex. the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Sec. 31S-36W	$\frac{1}{2}$ of 26.87	7-14-49
114510-K	That part of SE $\frac{1}{4}$ lying S. & E. of r/w of D. C. & C. V. RR Co. Sec. 27-31S-36W	$\frac{1}{2}$ of 66.87	9-5-54
114510-Q	Tract of 1.38 acres in Sec. 27-31S-36W.	1.38	2-26-51
114510-R	Tract of 1.38 acres in Sec. 27-31S-36W.	1.38	2-19-51
114510-S	Tract of 1.38 acres in Sec. 27-31S-36W.	1.38	2-19-51

Lease- File No.:	Description:	Number of Acres:	Lease Exp. Date:
114510-T	Tract of 1.375 acres in Sec. 27-31S-36W.	1.375	2-27-51
115466	NE $\frac{1}{4}$ & SW $\frac{1}{4}$ Sec. 28-31S-36W	320	4-23-51
114524	NW $\frac{1}{4}$ Sec. 28-31S-36W	160	6-18-48
114518	SE $\frac{1}{4}$ Sec. 28-31S-36W	160	9-28-56
114523	NE $\frac{1}{4}$ Sec. 29-31S-36W, above 3400 feet	160	6-18-57
114511	NW $\frac{1}{4}$ and SE $\frac{1}{4}$ Sec. 29-31S-36W	320	10-19-50
114516	SW $\frac{1}{4}$ Sec. 29-31S-36W	160	11-13-52
114501	NE $\frac{1}{4}$ Sec. 30-31S-36W	160	10-20-52
114507	NW $\frac{1}{4}$ Sec. 30-31S-36W	160	4-15-54
114517	SW $\frac{1}{4}$ Sec. 30-31S-36W	160	11-13-52
114515	SE $\frac{1}{4}$ Sec. 30-31S-36W	160	10-22-50
121750	Lots 1 & 2 & E2 NW4 & NE4 Sec. 31-31S-36W	320	10-19-52
81592	SW $\frac{1}{4}$ Sec. 31-31S-36W	151.55	3-12-50
[fol. 150]			
114531	SE $\frac{1}{4}$ Sec. 31-31S-36W	160	3-17-51
121749	E $\frac{1}{2}$ Sec. 32-31S-36W	320	10-19-52
121923	W $\frac{1}{2}$ Sec. 32-31S-36W	320	10-21-52
48604	NE $\frac{1}{4}$ Sec. 33-31S-36W	160	2-1-49
115466	NW $\frac{1}{4}$ Sec. 33-31S-36W	160	4-23-51
114520	SE $\frac{1}{4}$ Sec. 33-31S-36W	160	5-23-49
127906	SW $\frac{1}{4}$ Sec. 33-31S-36W	160	9-2-53
48625	NE $\frac{1}{4}$ Sec. 34-31S-36W	160	2-1-49
114510-A	NW $\frac{1}{4}$ Sec. 34-31S-36W	$\frac{1}{2}$ of 160	12-2-49
114510-M	NW $\frac{1}{4}$ Sec. 34-31S-36W	$\frac{1}{2}$ of 160	9-5-54
114530	SW $\frac{1}{4}$ Sec. 34-31S-36W	160	9-28-56
127240	SE $\frac{1}{4}$ Sec. 34-31S-36W	160	9-1-53

[fol. 151]

PLEASANT VALLEY BLOCK

EXHIBIT "A"

Lease File No.:	Description:	Number of Acres:	Lease Exp. Date:
108576	NE $\frac{1}{4}$ Sec. 33-33S-35W	160	3-23-53
108575	NW $\frac{1}{4}$ Sec. 33-33S-35W	160	9-16-49
108577	SW $\frac{1}{4}$ Sec. 33-33S-35W	160	10- 2-49
108578	SE $\frac{1}{4}$ Sec. 33-33S-35W	160	8-15-50
108579	NW $\frac{1}{4}$ Sec. 34-33S-35W	160	9- 2-49
108580	SW $\frac{1}{4}$ Sec. 34-33S-35W	160	9-16-49
108581	SE $\frac{1}{4}$ Sec. 34-33S-35W	160	9- 2-49
115605	NE $\frac{1}{4}$ Sec. 34-33S-35W	160	3-31-54
108583	NE $\frac{1}{4}$ Sec. 35-33S-35W	160	9- 2-49
108582	NW $\frac{1}{4}$ Sec. 35-33S-35W	160	9- 2-49
108584	SW $\frac{1}{4}$ Sec. 35-33S-35W	160	9- 2-49
108585	SE $\frac{1}{4}$ Sec. 35-33S-35W	160	9- 2-49
108598	W $\frac{1}{2}$ & NE $\frac{1}{4}$ Sec. 1-34S-35W	480	8-29-49
108599	SE $\frac{1}{4}$ Sec. 1-34S-35W	160	10-28-49
108597	E $\frac{1}{2}$ Sec. 2-34S-35W	320	8-29-49
108596	W $\frac{1}{2}$ Sec. 2-34S-35W	320	9-22-51
108593	NE $\frac{1}{4}$ Sec. 3-34S-35W	160	9- 2-49
129741	NW $\frac{1}{4}$ Sec. 3-34S-35W	160	11- 9-50
108594	SW $\frac{1}{4}$ Sec. 3-34S-35W	160	9- 2-49
127229	SE $\frac{1}{4}$ Sec. 3-34S-35W	160	8-23-53
129741	E $\frac{1}{4}$ Sec. 4-34S-35W	160	11- 9-50
108590	NW $\frac{1}{4}$ Sec. 4-34S-35W	160	11- 2-49
108591	SW $\frac{1}{4}$ Sec. 4-34S-35W	160	7-31-49
108592	SE $\frac{1}{4}$ Sec. 4-34S-35W	160	9- 2-49
108587	NE $\frac{1}{4}$ Sec. 5-34S-35W	160	9- 2-49
108586	NW $\frac{1}{4}$ Sec. 5-34S-35W	160	9- 2-49
108588	N $\frac{1}{2}$ SW $\frac{1}{4}$ and N $\frac{1}{2}$ SE $\frac{1}{4}$ Sec. 5-34S-35W	160	7- 8-50
108589	S $\frac{1}{2}$ S $\frac{1}{2}$ Sec. 5-34S-35W	160	9- 2-49

[fol. 152]

**EXHIBIT B TO DEFENDANT'S REQUESTS FOR
ADMISSIONS BY PLAINTIFF**

July 29, 1949

Cities Service Gas Company
First National Building
Oklahoma City 1, Oklahoma

Attention Mr. G. C. Roth

Gas Purchase Contract
Extension of Well Connection Date

Gentlemen:

Under date of June 16, 1949, a gas purchase contract (wellhead form) was entered into between The Texas Company and Columbian Fuel Corporation, as Seller, and Cities Service Gas Company, as Buyer, affecting natural gas to be produced from sixteen wells which Texas and Columbian then owned jointly or contemplated drilling jointly in Stevens County, Kansas, on what is known as the Moscow and Pleasant Valley blocks. Among other things, this contract provided that pending the construction of large diameter pipe line by Cities from its Hugoton compressor station to a point within or near Township 34 South, Range 35 West, Stevens County, Kansas, Cities agreed to construct gathering lines to receive and market gas from Seller's wells and to have said gathering lines completed and ready for operation with Seller's completed wells connected thereto not later than August 1, 1949.

It is recognized that at the time negotiations leading up to the execution of said contract were commenced there appeared to be ample time for Cities to comply with the provision of this contract to connect all of Seller's completed wells on or before August 1, 1949. However, the delay in final execution of this contract resulted in lack of sufficient time for Cities to acquire the necessary rights-of-way, lay the gathering lines, and take delivery of gas from Seller's completed wells on or before August 1, 1949.

It is accordingly agreed that Cities will continue with due diligence to complete the work necessary to provide such pipe line well connections and market for gas produced from said wells at the earliest possible date, but that its obligation under said contract of June 16, 1949, to complete said gathering lines and connect Seller's completed wells and market gas therefrom is extended to September 1, 1949.

[fol. 153] Except as hereby modified said contract is to be and remain in full force and effect according to all of its terms and provisions. If this modification is satisfactory, please indicate your acceptance, returning fully executed copies of this letter to each of the Sellers.

Very truly yours,

THE TEXAS COMPANY
Producing Department

CHJ-EV

By /s/ M. L. TERRY
M. L. TERRY
Attorney-in-Fact

[Stamp—Checked and Approved—WAP]

COLUMBIAN FUEL CORPORATION

ATTEST: /s/ R. A. COVER By: /s/ C. E. KAYSER
Ass't Secretary President
Jointly and severally
"Seller"

[Stamp—Approved as to Form—Two Illegible Signatures]

ACCEPTED:

DATED: August 16, 1949

CITIES SERVICE GAS COMPANY

By /s/ GEO. H. BAIRD

ATTEST: /s/ A. W. LEVAN Vice President
Ass't Secretary "Buyer"

[fol. 154]

**EXHIBIT K TO DEFENDANT'S REQUESTS FOR
ADMISSION BY PLAINTIFF**

[Handwritten notation—Correspondence in form of letter of acceptance for filing dated February 7, 1955 furnished May 2, 1955.]

[Illegible Stamp]

[Emblem]

**CITIES SERVICE GAS COMPANY
FIRST NATIONAL BUILDING
OKLAHOMA CITY 1, OKLAHOMA**

Legal Division

May 13, 1955

**The Texas Company
P. O. Box 2420
Tulsa 2, Oklahoma**

**Attention: J. Howard Johnson
Supt. Gas & Gasoline Plants**

**Re: Contract Dates 6-16-49, 12-17-51,
12-20-51**

Location: Kansas-Hugoton Field

[Handwritten notation on right side of page—Illegible]

Gentlemen:

Our Company is purchasing gas from you from the above described Field under the terms of the captioned Contracts. Under the terms of the Natural Gas Act and Federal Power Commission Order 174 as Amended, our Company is authorized to make payments for natural gas purchased only pursuant to filed Rate Schedules of each Independent Producer. In order to complete our files, it is respectfully requested that you furnish us, at your convenience, copies of the following items which have been checked pertaining to your sale to our Company under the above described Contract:

- () Statement of price and pressure base contained in Rate Schedule.
- () Letter of transmittal of Rate Schedule.

- () A complete list of documents filed as Rate Schedule or Supplements or Amendments thereof.
- () All correspondence from the Federal Power Commission relating to your Rate Schedule.
- (√) Copy of Application for Certificate of Public Convenience and Necessity.
- (√) All correspondence from Federal Power Commission relating to your Application for Certificate.
- (√) All Orders of Federal Power Commission relating to your Certificate Application and Rate Schedule filing.

With respect to any correspondence from the Federal Power Commission, we are particularly interested in the dates upon which your Rate Schedules and Certificate Applications were accepted for filing, the Federal Power Commission Rate Schedule number, the Docket Number assigned to your Certificate Application, and date of issuance of Certificate.

We will greatly appreciate your prompt cooperation in this matter as this information is needed in order for us to make payments for gas purchased from you.

Very truly yours,

/s/ ROBERT N. BERRY
Robert N. Berry
Attorney

RNB:n

[fol. 155]

EXHIBIT L-1 TO DEFENDANT'S REQUESTS FOR
ADMISSIONS BY PLAINTIFF

THE TEXAS COMPANY
TEXACO PETROLEUM PRODUCTS

[Emblem]

PRODUCING DEPARTMENT
OKLAHOMA DIVISION

Houston 1, Texas
P. O. Box 2332

September 24, 1954

[Handwritten notation—8-30-49]

FPC RATE SCHEDULE

The Texas Company
Oklahoma Division Contract
Contract No. O-1

Mr. Leon M. Fuquay, Secretary
Federal Power Commission
Washington 25, D. C.

Dear Sir:

We are enclosing herewith for filing with the Federal Power Commission, in accordance with Sections 154.92(a) and 154.93 of Subchapter E of the Federal Power Commission's regulations under the Natural Gas Act, the following:

(1) Two (2) copies of a gas sales contract between The Texas Company, Seller and Cities Service Gas Company, Buyer, dated June 16, 1949, covering the sale of gas from certain properties located in the Hugoton Field, Stevens County, Kansas. Also two (2) copies of a letter agreement dated September 8, 1949 amending the contract of June 16, 1949 to cover additional acreage.

(2) Two (2) copies each of Seventeen (17) billings made for a recent month covering gas sold from individual

properties under terms of the aforementioned contract and letter agreement, referred to as Table I.

A complete copy of the material included herewith other than Item (1) above has been mailed to Cities Service Gas Company, the Buyer.

[fol. 156] An application for Certificate of Public Convenience and Necessity covering the Oklahoma Division, Producing Department, The Texas Company, has been contemporaneously filed herewith in which application the above mentioned gas sales contract has been designated as Contract No. O-1.

Very truly yours,

THE TEXAS COMPANY

By Signed: W. V. VIETTI
W. V. VIETTI
DIVISION MANAGER
GAS DIVISION

[fol. 157]

EXHIBIT L-2 TO DEFENDANT'S REQUESTS FOR
ADMISSIONS BY PLAINTIFF

SELLER:	THE TEXAS COMPANY
PURCHASER:	CITIES SERVICE GAS COMPANY
PROPERTY:	MOSCOW AND PLEASANT VALLEY BLOCKS
FIELD:	HUGGTON GAS FIELD
COUNTY AND STATE:	STEVENS COUNTY, KANSAS
CONTRACT DATE:	JUNE 16, 1949

THE TEXAS COMPANY, Seller, in accordance with Section 154.92 (a) of Subchapter E of the Commission's Regulations under the Natural Gas Act, files herewith said subject contract which was in effect on June 7, 1954, as its rate schedule as defined in Section 154.93. Application for a Certificate of Public Convenience and Necessity has been contemporaneously filed herewith.

This rate schedule is filed under protest and, to avoid the penalties provided in Section 21 of the Natural Gas Act. It is also made subject to The Texas Company's Application for Rehearing in respect to Order 174-A, filed August 25, 1954, Federal Power Commission Docket R-138, any and all resulting decisions, determinations, proceedings, orders, rules or regulations, and any judicial appeals therefrom or reviews thereof. By filing this rate schedule The Texas Company does not admit that it or the sales of gas embraced by such rate schedule are subject to regulation by the Commission and The Texas Company hereby expressly reserves not only its legal and equitable rights to contest such regulation but also any and all contractual rights it now has or may in the future have by virtue of the terms and provisions of said rate schedule, whether or not same conflict with or may be contrary to the provisions of any order, rule, regulation, decision or determination that has or may be issued or adopted by the Commission.

There is shown on Table I attached hereto actual billing for a recent month to show how the billing is determined. The volumes and revenues shown represent The Texas Company's working interest and its royalty owners' interest only, and do not include the interests of other working interest and royalty owners.

A copy of this statement, together with letter of transmittal to the Commission required by Section 154.99, has been furnished the Purchaser. The Purchaser has in its possession a complete copy of the subject contract.

Communications with respect hereto should be sent to:

W. V. Vietti, Division Manager
Gas Division
The Texas Company
P. O. Box 2332
Houston 1, Texas

[fol. 159] It is respectfully requested that copies of such communications be sent to:

P. F. Schlicher, Attorney
The Texas Company
135 East 42nd Street
New York 17, New York

and to:

M. L. Terry, Division Manager
Producing Department
The Texas Company
P. O. Box 2420
Tulsa 2, Oklahoma

Respectfully submitted,

THE TEXAS COMPANY

By Signed: W. V. VIETTI
W. V. Vietti
Division Manager,
Gas Division

[fol. 160]

STATE OF TEXAS :

COUNTY OF HARRIS:

BEFORE ME, the undersigned authority, on this day personally appeared W. V. Vietti, who, after being duly sworn, on his oath deposed and said:

That he is Division Manager, Gas Division, Producing Department, The Texas Company, and is duly authorized to make this affidavit, that he has read the foregoing, is familiar with the contents thereof, has examined the rate schedule and exhibits attached hereto, and the facts herein and in said exhibits are true and correct to the best of his information and belief.

Signed: W. V. VIETTI
W. V. Vietti

SUBSCRIBED AND SWORN to before me this the day of Oct 19 1954, 1954.

E. A. COWART
Notary Public

[fol. 161]

**EXHIBIT L-3 TO DEFENDANT'S REQUESTS
FOR ADMISSIONS BY PLAINTIFF**

TABLE I

SELLER: THE TEXAS COMPANY
PURCHASER: CITIES SERVICE GAS COMPANY
PROPERTY: BANE GAS UNIT
FIELD: HUGOTON GAS FIELD
COUNTY AND STATE: STEVENS COUNTY, KANSAS
CONTRACT DATE: JUNE 16, 1949

GAS SALES DURING JUNE, 1954

<u>VOLUME-MCF</u>	<u>PRICE PER MCF</u>	<u>REVENUE</u>
634	11¢	\$ 69.74

The Texas Company .89514 Interest Only.

Volume measurement and rate price in accordance with
 Kansas Corporation Commission Order Docket No. 44,079-C
 (C-3216), effective 1-1-54.

[fol. 162]

TABLE I

SELLER: THE TEXAS COMPANY
PURCHASER: CITIES SERVICE GAS COMPANY
PROPERTY: CURTIS GAS UNIT
FIELD: HUGOTON GAS FIELD
COUNTY AND STATE: STEVENS COUNTY, KANSAS
CONTRACT DATE: JUNE 16, 1949

GAS SALES DURING JUNE, 1954

<u>VOLUME-MCF</u>	<u>PRICE PER MCF</u>	<u>REVENUE</u>
33,053	11¢	\$ 3,635.83

The Texas Company .89717 Interest Only.

Volume measurement and rate price in accordance with
 Kansas Corporation Commission Order Docket No. 44,079-C
 (C-3216), effective 1-1-54.

[fol. 163]

TABLE I

SELLER: THE TEXAS COMPANY
 PURCHASER: CITIES SERVICE GAS COMPANY
 PROPERTY: DUDLEY GAS UNIT
 FIELD: HUGOTON GAS FIELD
 COUNTY AND STATE: STEVENS COUNTY, KANSAS
 CONTRACT DATE: JUNE 16, 1949

 GAS SALES DURING JUNE, 1954.

<u>VOLUME-MCF</u>	<u>PRICE PER MCF</u>	<u>REVENUE</u>
18,276	11¢	\$ 2,010.36

The Texas Company .89717 Interest Only.

Volume measurement and rate price in accordance with Kansas Corporation Commission Order Docket No. 44,079-C (C-3216), effective 1-1-54.

[fol. 164]

TABLE I

SELLER: THE TEXAS COMPANY
 PURCHASER: CITIES SERVICE GAS COMPANY
 PROPERTY: EMRIE GAS UNIT
 FIELD: HUGOTON GAS FIELD
 COUNTY AND STATE: STEVENS COUNTY, KANSAS
 CONTRACT DATE: JUNE 16, 1949

 GAS SALES DURING JUNE, 1954

<u>VOLUME-MCF</u>	<u>PRICE PER MCF</u>	<u>REVENUE</u>
45,199	11¢	\$ 4,971.89

The Texas Company .89717 Interest Only.

Volume measurement and rate price in accordance with Kansas Corporation Commission Order Docket No. 44,079-C (C-3216), effective 1-1-54.

[fol. 165]

TABLE I

SELLER: THE TEXAS COMPANY
 PURCHASER: CITIES SERVICE GAS COMPANY
 PROPERTY: MILLER GAS UNIT
 FIELD: HUGOTON GAS FIELD
 COUNTY AND STATE: STEVENS COUNTY, KANSAS
 CONTRACT DATE: JUNE 16, 1949

 GAS SALES DURING JUNE, 1954

<u>VOLUME-MCF</u>	<u>PRICE PER MCF</u>	<u>REVENUE</u>
48,596	11¢	\$ 5,345.56

The Texas Company .89717 Interest Only.

Volume measurement and rate price in accordance with Kansas Corporation Commission Order Docket No. 44,079-C (C-3216), effective 1-1-54.

[fol. 166]

TABLE I

SELLER: THE TEXAS COMPANY
 PURCHASER: CITIES SERVICE GAS COMPANY
 PROPERTY: NEWBY GAS UNIT
 FIELD: HUGOTON GAS FIELD
 COUNTY AND STATE: STEVENS COUNTY, KANSAS
 CONTRACT DATE: JUNE 16, 1949

 GAS SALES DURING JUNE, 1954

<u>VOLUME-MCF</u>	<u>PRICE PER MCF</u>	<u>REVENUE</u>
53,384	11¢	\$ 5,872.24

The Texas Company .89717 Interest Only.

Volume measurement and rate price in accordance with Kansas Corporation Commission Order Docket No. 44,079-C (C-3216), effective 1-1-54.

[fol. 167]

TABLE I

SELLER: THE TEXAS COMPANY
 PURCHASER: CITIES SERVICE GAS COMPANY
 PROPERTY: PACKER GAS UNIT
 FIELD: HUGOTON GAS FIELD
 COUNTY AND STATE: STEVENS COUNTY, KANSAS
 CONTRACT DATE: JUNE 16, 1949

GAS SALES DURING JUNE, 1954

<u>VOLUME-MCF</u>	<u>PRICE PER MCF</u>	<u>REVENUE</u>
1,154	11¢	\$ 126.94

The Texas Company .89514 Interest Only.

Volume measurement and rate price in accordance with Kansas Corporation Commission Order Docket No. 44,079-C (C-3216), effective 1-1-54.

[fol. 168]

TABLE I

SELLER: THE TEXAS COMPANY
 PURCHASER: CITIES SERVICE GAS COMPANY
 PROPERTY: PRUITT GAS UNIT
 FIELD: HUGOTON GAS FIELD
 COUNTY AND STATE: STEVENS COUNTY, KANSAS
 CONTRACT DATE: JUNE 16, 1949

GAS SALES DURING JUNE, 1954

<u>VOLUME-MCF</u>	<u>PRICE PER MCF</u>	<u>REVENUE</u>
609	11¢	\$ 66.99

The Texas Company .89514 Interest Only.

Volume measurement and rate price in accordance with Kansas Corporation Commission Order Docket No. 44,079-C (C-3216), effective 1-1-54.

[fol. 169]

TABLE I

SELLER: THE TEXAS COMPANY
 PURCHASER: CITIES SERVICE GAS COMPANY
 PROPERTY: REMER GAS UNIT
 FIELD: HUGOTON GAS FIELD
 COUNTY AND STATE: STEVENS COUNTY, KANSAS
 CONTRACT DATE: JUNE 16, 1949

 GAS SALES DURING JUNE, 1954

<u>VOLUME-MCF</u>	<u>PRICE PER MCF</u>	<u>REVENUE</u>
854	11¢	\$ 93.94

The Texas Company .89514 Interest Only.

Volume measurement and rate price in accordance with Kansas Corporation Commission Order Docket No. 44,079-C (C-3216), effective 1-1-54.

[fol. 170]

TABLE I

SELLER: THE TEXAS COMPANY
 PURCHASER: CITIES SERVICE GAS COMPANY
 PROPERTY: REYNOLDS GAS UNIT
 FIELD: HUGOTON GAS FIELD
 COUNTY AND STATE: STEVENS COUNTY, KANSAS
 CONTRACT DATE: JUNE 16, 1949

 GAS SALES DURING JUNE, 1954

<u>VOLUME-MCF</u>	<u>PRICE PER MCF</u>	<u>REVENUE</u>
35,915	11¢	\$ 3,950.65

The Texas Company .89717 Interest Only.

Volume measurement and rate price in accordance with Kansas Corporation Commission Order Docket No. 44,079-C (C-3216), effective 1-1-54.

[fol. 171]

TABLE I

SELLER: THE TEXAS COMPANY.
 PURCHASER: CITIES SERVICE GAS COMPANY
 PROPERTY: RITTENOUR GAS UNIT
 FIELD: HUGOTON GAS FIELD
 COUNTY AND STATE: STEVENS COUNTY, KANSAS
 CONTRACT DATE: JUNE 16, 1949

GAS SALES DURING JUNE, 1954

VOLUME-MCF	PRICE PER MCF	REVENUE
1,345	11¢	\$ 147.95

The Texas Company .91025 Interest Only.

NOTE: This property added to original contract by Letter Agreement dated September 8, 1949.

Volume measurement and rate price in accordance with Kansas Corporation Commission Order Docket No. 44,079-C (C-3216), effective 1-1-54.

[fol. 172]

TABLE I

SELLER: THE TEXAS COMPANY
 PURCHASER: CITIES SERVICE GAS COMPANY
 PROPERTY: SCHWEITER GAS UNIT
 COUNTY AND STATE: STEVENS COUNTY, KANSAS
 CONTRACT DATE: JUNE 16, 1949

GAS SALES DURING JUNE, 1954

VOLUME-MCF	PRICE PER MCF	REVENUE
948	11¢	\$ 104.28

The Texas Company .89514 Interest Only.

Volume measurement and rate price in accordance with Kansas Corporation Commission Order Docket No. 44,079-C (C-3216), effective 1-1-54.

[fol. 173]

TABLE I

SELLER: THE TEXAS COMPANY
 PURCHASER: CITIES SERVICE GAS COMPANY
 PROPERTY: TROY SKINNER GAS UNIT
 FIELD: HUGOTON GAS FIELD
 COUNTY AND STATE: STEVENS COUNTY, KANSAS
 CONTRACT DATE: JUNE 16, 1949

GAS SALES DURING JUNE, 1954

VOLUME-MCF	PRICE PER MCF	REVENUE
716	11¢	\$ 78.76

The Texas Company .89514 Interest Only.

Volume measurement and rate price in accordance with Kansas Corporation Commission Order Docket No. 44,079-C (C-3216), effective 1-1-54.

[fol. 174]

TABLE I

SELLER: THE TEXAS COMPANY
 PURCHASER: CITIES SERVICE GAS COMPANY
 PROPERTY: SKINNER GAS UNIT
 FIELD: HUGOTON GAS FIELD
 COUNTY AND STATE: STEVENS COUNTY, KANSAS
 CONTRACT DATE: JUNE 16, 1954

GAS SALES DURING JUNE, 1954

VOLUME-MCF	PRICE PER MCF	REVENUE
392	11¢	\$43.12

The Texas Company .89514 Interest Only.

Volume measurement and rate price in accordance with Kansas Corporation Commission Order Docket No. 44,079-C (C-3216), effective 1-1-54.

[fol. 175]

TABLE I

SELLER: THE TEXAS COMPANY
 PURCHASER: CITIES SERVICE GAS COMPANY
 PROPERTY: THURLOW GAS UNIT
 FIELD: HUGOTON GAS FIELD
 COUNTY AND STATE: STEVENS COUNTY, KANSAS
 CONTRACT DATE: JUNE 16, 1949

 GAS SALES DURING JUNE, 1954

VOLUME-MCF	PRICE PER MCF	REVENUE
23,860	11¢	\$2,624.60

The Texas Company .89717 Interest Only.

Volume measurement and rate price in accordance with Kansas Corporation Commission Order Docket No. 44,079-C (C-3216), effective 1-1-54.

[fol. 176]

TABLE I

SELLER: THE TEXAS COMPANY
 PURCHASER: CITIES SERVICE GAS COMPANY
 PROPERTY: VAN SICKLE GAS UNIT
 FIELD: HUGOTON GAS FIELD
 COUNTY AND STATE: STEVENS COUNTY, OKLAHOMA
 CONTRACT DATE: JUNE 16, 1949

 GAS SALES DURING JUNE, 1954

VOLUME-MCF	PRICE PER MCF	REVENUE
24,610	11¢	\$2,707.10

The Texas Company .89717 Interest Only.

Volume measurement and rate price in accordance with Kansas Corporation Commission Order Docket No. 44,079-C (C-3216), effective 1-1-54.

[fol. 177]

TABLE 1

SELLER:	THE TEXAS COMPANY
PURCHASER:	CITIES SERVICE GAS COMPANY
PROPERTY:	WHEELER GAS UNIT
FIELD:	HUGOTON GAS FIELD
COUNTY AND STATE:	STEVENS COUNTY, KANSAS
CONTRACT DATE:	JUNE 16, 1949

GAS SALES DURING JUNE, 1954

<u>VOLUME-MCF</u>	<u>PRICE PER MCF</u>	<u>REVENUE</u>
849	11¢	\$93.39

The Texas Company 89514 Interest Only.

Volume measurement and rate price in accordance with
Kansas Corporation Commission Order Docket No. 44,079-C
(C-3216), effective 1-1-54.

[fol. 178]

EXHIBIT L-4 TO DEFENDANT'S REQUESTS FOR
ADMISSIONS BY PLAINTIFF

[Handwritten notation—See letter of 7/28/58 of Wimbrush]

FEDERAL POWER COMMISSION
WASHINGTON 25

[Two Stamps Illegible]

The Texas Co..
Box 2332
Houston 1, Texas

Gentlemen:

This is to advise you that the rate filings listed at the
bottom of this letter have been accepted for filing.

In the event that any of the documents comprising the
listed rate schedules contain provisions for future auto-

matic adjustments in rates and charges based upon new or increased taxes, prices paid for gas by or to others, price re-determination provisions, or any similar provision, your attention is directed to the fact that such provisions, when invoked to change the rates being charged June 7, 1954, will constitute a change in such rates and charges within the meaning of Section 4(d) of the Natural Gas Act and Section 154.94 of the Commission's Regulations under such Act as promulgated by this Commission's Order No. 174-B. The Act and the Commission's rules require that such changes be filed with the Commission not more than 90 days nor less than 30 days prior to the proposed effective date thereof.

This acceptance for filing shall not be construed as a waiver of the requirements of Section 7 of the Natural Gas Act, as amended; nor shall it be construed as constituting approval of any rate, charge, classification, or any rule, regulation or practice affecting such rate or service contained in the rate filing; nor shall such acceptance be deemed as recognition of any claimed contractual right or obligation associated therewith; and such acceptance is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against your company.

Very truly yours,

/s/ LEON M. FUQUAY
Leon M. Fuquay
Secretary

Description of Document		Date of Letter of Transmittal	Rate Schedule Designation
The Texas Co.			
Statement	undated	9-24-54	F.P.C. Gas Rate Schedule No. 68
Letter	12-20-51	9-24-54	Supplement No. 1 to F.P.C. Gas Rate Schedule No. 68
Bill	April 1954	9-24-54	Supplement No. 2 to F.P.C. Gas Rate Schedule No. 68
Statement	undated	9-24-54	F.P.C. Gas Rate Schedule No. 69
Letter	12-17-51	9-24-54	Supplement No. 1 to F.P.C. Gas Rate Schedule No. 69
Bill	June 1954	9-24-54	Supplement No. 2 to F.P.C. Gas Rate Schedule No. 69
[fol. 179]			
Contract	5-15-50	9-24-54	F.P.C. Gas Rate Schedule No. 70
Bill	June 1954	9-24-54	Supplement No. 1 to F.P.C. Gas Rate Schedule No. 70
Statement	10-6-54	9-24-54	F.P.C. Gas Rate Schedule No. 71
Contract	10-1-50	9-24-54	F.P.C. Gas Rate Schedule No. 72
Sup. Agree.	3-30-51	9-24-54	Supplement No. 1 to F.P.C. Gas Rate Schedule No. 72
Bill	April 1954	9-24-54	Supplement No. 2 to F.P.C. Gas Rate Schedule No. 72
Statement	10-20-54	10-20-54	F.P.C. Gas Rate Schedule No. 73
Contract	6-11-52	10-20-54	F.P.C. Gas Rate Schedule No. 74
Statement	10-20-54	10-20-54	F.P.C. Gas Rate Schedule No. 75
Statement	10-20-54	10-20-54	F.P.C. Gas Rate Schedule No. 77
Statement	10-20-54	10-20-54	F.P.C. Gas Rate Schedule No. 78
Statement	undated	10-12-54	F.P.C. Gas Rate Schedule No. 79
Statement	undated	10-12-54	F.P.C. Gas Rate Schedule No. 80

Continued—The Texas Co.

Description of Document		Date of Letter of Transmittal	Rate Schedule Designation
Statement	undated	10-12-54	F.P.C. Gas Rate Schedule No. 81
Statement	undated	10-12-54	F.P.C. Gas Rate Schedule No. 82
Statement	undated	10-12-54	F.P.C. Gas Rate Schedule No. 83
Statement	undated	10-12-54	F.P.C. Gas Rate Schedule No. 84
Statement	undated	10-12-54	F.P.C. Gas Rate Schedule No. 85
Statement	undated	10-12-54	F.P.C. Gas Rate Schedule No. 86
Statement	undated	10-12-54	F.P.C. Gas Rate Schedule No. 87
Contract	9-19-52	9-24-54	F.P.C. Gas Rate Schedule No. 98
Bill	April 1954	9-24-54	Supplement No. 1 to F.P.C. Gas Rate Schedule No. 98
[fol. 180]			
Contract	8-3-52	9-24-54	F.P.C. Gas Rate Schedule No. 99
Bill	April 1954	9-24-54	Supplement No. 1 to F.P.C. Gas Rate Schedule No. 99
Contract	6-16-49	9-24-54	F.P.C. Gas Rate Schedule No. 100
Letter	9-8-49	9-24-54	Supplement No. 1 to F.P.C. Gas Rate Schedule No. 100
Bill	June 1954	9-24-54	Supplement No. 2 to F.P.C. Gas Rate Schedule No. 100
Contract	4-3-50	10-20-54	F.P.C. Gas Rate Schedule No. 101
Letter	4-5-50	10-20-54	Supplement No. 1 to F.P.C. Gas Rate Schedule No. 101
Letter	4-3-50	10-20-54	Supplement No. 2 to F.P.C. Gas Rate Schedule No. 101
Letter	2-15-52	10-20-54	Supplement No. 3 to F.P.C. Gas Rate Schedule No. 101
Contract	6-1-54	10-20-54	F.P.C. Gas Rate Schedule No. 102

Continued—The Texas Co.

Description of Document	Date of Letter of Transmittal	Rate Schedule Designation
Letter	6-1-54	10-20-54
Supplement No. 1 to		
F.P.C. Gas Rate Schedule No. 10		
Contract	4-26-48	9-24-54
F.P.C. Gas Rate Schedule No. 10		
Contract	6-25-47	9-24-54
F.P.C. Gas Rate Schedule No. 10		
Contract	5-26-41	9-24-54
F.P.C. Gas Rate Schedule No. 10		
Contract	9-9-49	9-24-54
F.P.C. Gas Rate Schedule No. 10		
Sup. Agree.	9-9-49	9-24-54
Supplement No. 1 to		
F.P.C. Gas Rate Schedule No. 10		
Sup. Agree.	6-8-53	9-24-54
Supplement No. 2 to		
F.P.C. Gas Rate Schedule No. 10		
Bill	April 1954	9-24-54
Supplement No. 3 to		
F.P.C. Gas Rate Schedule No. 10		
[fol. 181]		
Contract	9-9-49	9-24-54
F.P.C. Gas Rate Schedule No. 10		
Sup. Agree.	9-9-49	9-24-54
Supplement No. 1 to		
F.P.C. Gas Rate Schedule No. 10		
Sup. Agree.	9-22-50	9-24-54
Supplement No. 2 to		
F.P.C. Gas Rate Schedule No. 10		
Bill	April 1954	9-24-54
Supplement No. 3 to		
F.P.C. Gas Rate Schedule No. 10		
Contract	9-9-49	9-24-54
F.P.C. Gas Rate Schedule No. 10		
Sup. Agree.	9-9-49	9-24-54
Supplement No. 1 to		
F.P.C. Gas Rate Schedule No. 10		
Sup. Agree.	10-22-52	9-24-54
Supplement No. 2 to		
F.P.C. Gas Rate Schedule No. 10		
Bill	June 1954	9-24-54
Supplement No. 3 to		
F.P.C. Gas Rate Schedule No. 10		
Contract	9-9-49	9-24-54
F.P.C. Gas Rate Schedule No. 10		
Sup. Agree.	9-9-49	9-24-54
Supplement No. 1 to		
F.P.C. Gas Rate Schedule No. 10		

Continued—The Texas Co.

Description of Document	Date of Letter of Transmittal	Rate Schedule Designation
Sup. Agree.	11-18-52	9-24-54
		Supplement No. 2 to F.P.C. Gas Rate Schedule No. 109
Bill	April 1954	9-24-54
		Supplement No. 3 to F.P.C. Gas Rate Schedule No. 109
Contract	9-9-49	9-24-54
		F.P.C. Gas Rate Schedule No. 110
Sup. Agree.	9-9-49	9-24-54
		Supplement No. 1 to F.P.C. Gas Rate Schedule No. 110
Sup. Agree.	5-18-50	9-24-54
		Supplement No. 2 to F.P.C. Gas Rate Schedule No. 110
Bill	June 1954	9-24-54
		Supplement No. 3 to F.P.C. Gas Rate Schedule No. 110
[fol. 182]		
Contract	5-23-45	9-24-54
		F.P.C. Gas Rate Schedule No. 111
Sup. Agree.	8-1-52	9-24-54
		Supplement No. 1 to F.P.C. Gas Rate Schedule No. 111
Bill	April 1954	9-24-54
		Supplement No. 2 to F.P.C. Gas Rate Schedule No. 111
Contract	1-20-53	9-24-54
		F.P.C. Gas Rate Schedule No. 112
Statement	11-17-54	11-17-54
		F.P.C. Gas Rate Schedule No. 113
Statement	11-17-54	11-17-54
		F.P.C. Gas Rate Schedule No. 114
Statement	11-17-54	11-17-54
		F.P.C. Gas Rate Schedule No. 115
Statement	11-17-54	11-17-54
		F.P.C. Gas Rate Schedule No. 116
Statement	11-17-54	11-17-54
		F.P.C. Gas Rate Schedule No. 117
Statement	11-17-54	11-17-54
		F.P.C. Gas Rate Schedule No. 118
Statement	11-17-54	11-17-54
		F.P.C. Gas Rate Schedule No. 119
Statement	11-17-54	11-17-54
		F.P.C. Gas Rate Schedule No. 120

EXHIBIT L-5 TO DEFENDANT'S REQUESTS FOR
ADMISSIONS BY PLAINTIFF

THE TEXAS COMPANY
TEXACO PETROLEUM PRODUCTS
(Emblem)

PRODUCING DEPARTMENT
GAS DIVISION

W. V. VIETTI, Division Manager

HOUSTON 1, TEXAS
Jun 13, 1957

CHANGE IN RATE SCHEDULE

The Texas Company
Oklahoma Division
Supplement No. 5

FPC Gas Rate Schedule No. 100
Contract O-1 in Docket No. G-4824

Mr. J. H. Gutride, Secretary
Federal Power Commission
Washington 25, D. C.

Dear Sir:

We are enclosing herewith for filing with the Federal Power Commission, pursuant to the Commission's Order No. 197, issued May 23, 1957, a change in the subject Rate Schedule effective July 1, 1957.

A complete copy of the material included herewith has been mailed to:

Cities Service Gas Company
First National Building
Oklahoma City, Oklahoma.

Yours very truly,

THE TEXAS COMPANY
PRODUCING DEPARTMENT

By s/ W. V. VIETTI
W. V. Vietti
Division Manager
Gas Division

Enclosure

[fol. 184]

FEDERAL POWER COMMISSION**In The Matter Of****THE TEXAS COMPANY
PRODUCING DEPARTMENT
OKLAHOMA DIVISION**

— 0 —

**CHANGE IN
RATE SCHEDULE**

[fol. 185]

**CHANGE IN
RATE SCHEDULE****The Texas Company
Producing Department
Oklahoma Division****Supplement No. 5
FPC Gas Rate Schedule No. 100
Contract O-1 in Docket No. G-4824****C O N T E N T S****General Statements Pages 1-4**

[fol. 186]

SUPPLEMENT No. 5, FPC GAS RATE SCHEDULE No. 100**DOCKET No. G-4824, CONTRACT O-1****SELLER: THE TEXAS COMPANY****PURCHASER: CITIES SERVICE GAS COMPANY****FIELD: HUGOTON****COUNTY AND STATE: STEVENS COUNTY, KANSAS****CONTRACT DATE: JUNE 16, 1949**

THE TEXAS COMPANY, Seller, files herewith a Change in Rate Schedule covering the subject contract, as follows:

1. This filing is submitted pursuant to Commission Order No. 197 to reflect a 50% reimbursement of the Kansas

gas severance tax of 1% effective July 1, 1957, levied on producers by act of the Kansas Legislature in House Bill No. 383.

2. Such reimbursement is provided by Section 13 of the contract dated 6-16-49 between The Texas Company and Cities Service Gas Company on file with the Commission and designated Contract O-1 FPC Gas Rate Schedule No. 100.
3. A copy of this filing was served on the buyer as required by the Commission's Regulations on Jun 18 1957.

[fol. 187]

4. Comparison of rates prior to and subsequent to such change in rate (cents per MCF):

<u>Date</u>	<u>Base Price Per MCF</u>	<u>Tax Reimbursement Per MCF</u>	<u>Total Price Per MCF</u>
June 30, 1957	11.000	—	11.000
July 1, 1957	11.000	.055	11.055

Sales for 12 months ending March 31, 1957 2,551,652 MCF. The volumes indicated above are gross volumes and the revenues shown include interests of royalty owners and overriding royalty owners and do not represent the net interest owned by Seller.

This change in rate schedule is filed under protest and to avoid the penalties provided in Section 21 of the Natural Gas Act. By filing this change in rate schedule, The Texas Company does not admit that it or the sale of gas embraced by the above mentioned contract are subject to regulation by the Commission and The Texas Company hereby expressly reserves not only its legal and equitable rights to contest such regulation but also any and all contractual rights it now has or may in the future have by virtue of the terms and provisions of said contract, whether or not same conflict with or may be contrary to the provisions of any order, rule, regulation, decision or determination that has or may be issued or adopted by the Commission.

[fol. 188] Communications with respect hereto should be sent to:

W. V. Vietti, Division Manager
Gas Division
The Texas Company
P. O. Box 2332
Houston 1, Texas

It is respectfully requested that copies of such communications be sent to:

P. F. Schlicher, Attorney
The Texas Company
135 East 42nd Street
New York 17, New York

and to:

M. L. Terry, Division Manager
Producing Department
The Texas Company
P. O. Box 2420
Tulsa 3, Oklahoma

Respectfully submitted,

THE TEXAS COMPANY

By s/ W. V. VIETTI
W. V. Vietti
Division Manager
Gas Division

[fol. 189]

STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared W. V. Vietti, who, after being duly sworn, on his oath deposed and said:

That he is Division Manager, Gas Division, Producing Department, The Texas Company, and is duly authorized to make this affidavit, that he has read the foregoing, is familiar with the contents thereof, and the facts set forth therein are true and correct to the best of his information, knowledge and belief.

s/ W. V. VIETTI
W. V. Vietti

SUBSCRIBED AND SWORN to before me this day of
....., 1957.

s/ E. A. COWART
Notary Public in and for
Harris County, Texas

[Vol. 190]

**EXHIBIT L-6 TO DEFENDANT'S REQUESTS FOR
ADMISSIONS BY PLAINTIFF****FEDERAL POWER COMMISSION****WASHINGTON 25****7/12/57****AIRMAIL**

**The Texas Company
Post Office Box 2332
Houston 1, Texas**

Attention: Mr. W. V. Vietti

Gentlemen:

This is with reference to your tenders of June 13, 1957, submitting for filing proposed rate increases under your FPC Gas Rate Schedules Nos. 68, 69, 70, 72, 98, 99, 100, 106, 107, 108, 109, 110 and 112, to reflect reimbursement to your company for a portion of the Kansas State Severance Tax.

Review of these rate schedules discloses no documents therein as constituting specific authorization of the rate of 11¢ per Mef at 14.65 psia which was utilized in the Notices of Change. Therefore, your tenders of June 13, 1957 are not acceptable filings at this time.

It is also noted that your FPC Gas Rate Schedules Nos. 68 and 69 contain no evidence that The Texas Company has signatory status to the respective sales contracts by assignment, ratification or otherwise. Inasmuch as Section 154.91(d) of the Commission's Rules, as amended by Order No. 190, does not permit the filing of rate schedules by a party non-signatory to the contract under which his gas is sold, such rate schedules are subject to rejection. However, in order to provide The Texas Company the opportunity to complete these two rate schedules by submission of evidence that may have become available showing that it has acquired the status of a signatory party to the contracts, no action to reject will be taken within ten days from the date of this letter.

Until you file, for each rate schedule, two copies of the KANSAS MINIMUM PRICE ORDER of December 2, 1953, and all papers related thereto exchanged with the buyer as, for example, any agreement by the buyer to pay the related [fol. 191] rate on a contingent or conditional basis, a filing date will not be assigned to your tenders of June 13, and no action will be taken thereon. Please make your reply within ten days of the date of this letter. Failure to reply may result in rejection of your tenders.

Very truly yours,

J. H. GUTRIDE
Secretary

cc: The Texas Company
135 East 42nd Street
New York 17, New York
Attention: P. F. Schlicher, Attorney

The Texas Company
P. O. Box 2420
Tulsa 3, Oklahoma
Attention: Mr. M. L. Terry

[fol. 192]

EXHIBIT L-8 TO DEFENDANT'S REQUESTS FOR
ADMISSIONS BY PLAINTIFF*(Handwritten notation—Part of Texas letter 9/25/58)*

FEDERAL POWER COMMISSION

WASHINGTON 25

JUL 19 1957

.AIR MAIL

The Texas Company
Post Office Box 2332
Houston 1, Texas

Attention: Mr. W. V. Vietti

Gentlemen:

In compliance with the request in your telegram of July 16, 1957, an extension of time to August 1, 1957 is hereby granted to furnish the information and documents requested in this Commission's letter dated July 12, 1957. Until receipt thereof, a filing date will not be assigned to the changes in rate proposed by your tenders of June 13, 1957.

Very truly yours,

Secretary
J. H. GUTRIDEcc: The Texas Company
136 East 42nd Street
New York, New York
Attention: P. F. Schlicher, AttorneyThe Texas Company
P. O. Box 2420
Tulsa 3, Oklahoma
Attention: Mr. M. L. Terry

[Stamp illegible]

[fol. 193]

EXHIBIT L-9(1) TO DEFENDANT'S REQUESTS FOR
ADMISSIONS BY PLAINTIFF

THE TEXAS COMPANY
TEXACO PETROLEUM PRODUCTS
(Emblem)

PRODUCING DEPARTMENT
GAS DIVISION

W. V. VIETTI, Division Manager

HOUSTON 1, TEXAS

[Date illegible]

CHANGE IN RATE SCHEDULE
The Texas Company
Oklahoma Division
FPC Gas Rate Schedule No. 100
Contract O-1 in Docket No. G-4824

Mr. J. H. Gutride, Secretary
Federal Power Commission
Washington 25, D. C.

Dear Sir:

Reference is made to the Commission's letter of July 12, 1957, concerning, among others, our tender of June 13, 1957, submitting for filing a proposed rate increase under our subject FPC Gas Rate Schedule to reflect reimbursement for a portion of the Kansas State Severance Tax. Pursuant to said July 12, 1957, letter we enclose herewith for filing with the Commission, the following:

1. Two (2) copies of the State Corporation Commission of the State of Kansas, Conservation Division, Minimum Price Order dated December 2, 1953, Docket No. 44,079-C (C-3216).

Supp. #3

2. Two (2) copies of a letter dated January 21, 1954, from the Buyer, Cities Service Gas Co., setting forth the contingent or conditional basis upon which the minimum rate will be paid.

Supp. #4

Yours very truly,

THE TEXAS COMPANY
PRODUCING DEPARTMENT

By /s/ P. F. SCHLICHER

Enclosures

[fol. 194]

EXHIBIT L-9(8) TO DEFENDANT'S REQUESTS FOR
ADMISSIONS BY PLAINTIFF

COPY

CITIES SERVICE GAS COMPANY

FIRST NATIONAL BUILDING

OKLAHOMA CITY 1, OKLAHOMA

January 21, 1954

The Texas Company
P. O. Box 2420
Tulsa, Oklahoma

Gentlemen:

The State Corporation Commission of the State of Kansas by Order dated December 2, 1953, in Docket No. 44079-C (C-3216) directed that on and after January 1, 1954, as a condition precedent for withdrawal of gas from the Hugoton Gas Field in Kansas, there shall be paid therefor or attributed thereto, at the wellhead, a minimum price of not less than eleven cents (11¢) per M.c.f. (14.65 pounds p.s.i.a.).

Cities Service Gas Company and certain other parties filed Petitions in the District Court of Finney County, Kansas, for a judicial review of the said Order.

Pending final judicial determination of the said Order and beginning January 1, 1954, Cities Service Gas Company intends to pay for all gas purchased by it in the Kansas Hugoton Field in strict compliance with the terms and conditions of the said Order. Such compliance with said Order by this Company, however, is made to avoid the penalties and actions provided by the Kansas statutes for a violation thereof, and the payments made to you in compliance with said Order pending its final judicial determination are to be considered and accepted by you as involuntary payments on our part, without prejudice to our rights in said litigation, and in no event as an acquiescence by us in the validity of said Order.

In the event the said Order is finally judicially modified or declared to be invalid in whole or in part, as a result of which you have been overpaid for gas purchased during the interim aforesaid, Cities Service Gas Company will expect you to refund to it the amount of said overpayment.

Very truly yours,

/s/ G. C. ROTH

G. C. Roth
Vice President

GCR:hl

[fol. 195]

EXHIBIT L-10 TO DEFENDANT'S REQUESTS FOR
ADMISSIONS BY PLAINTIFF

FEDERAL POWER COMMISSION

WASHINGTON 25

AUG 29 1957

The Texas Company
P. O. Box 2332
Houston 1, Texas

Gentlemen:

This is to advise you that the rate filings listed at the bottom of this letter have been accepted for filing.

In the event that any of the documents comprising the listed rate schedules contain provisions for future automatic adjustments in rates and charges based upon new or increased taxes, prices paid for gas by or to others, price re-determination provisions, or any similar provision, your attention is directed to the fact that such provisions, when invoked to change the rates being charged June 7, 1954, will constitute a change in such rates and charges within the meaning of Section 4(d) of the Natural Gas Act and Section 154.94 of the Commission's Regulations under such Act as promulgated by this Commission's Order No. 174-B. The Act and the Commission's Rules require that such changes be filed with the Commission not more than 90 days nor less than 30 days prior to the proposed effective date thereof.

This acceptance for filing shall not be construed as a waiver of the requirements of Section 7 of the Natural Gas Act, as amended; nor shall it be construed as constituting approval of any rate, charge, classification, or any rule, regulation or practice affecting such rate or service contained in the rate filing; nor shall such acceptance be deemed as recognition of any claimed contractual right or obligation associated therewith; and such acceptance is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against your company.

In future correspondence with the Commission concerning the rate schedules listed below, please refer to the FPC Gas Rate Schedule designation furnished you herewith, including the name of the independent producer and the rate schedule and supplement numbers.

Very truly yours,

/s/ J. H. GUTRIDE

J. H. Gutride

Secretary

Description of Document		Date of Letter of Transmittal	Rate Schedule Designation The Texas Company	
			FPC Gas Rate Schedule No.	Supple- ment No.
Order	12-2-53	7-29-57	72	3
Letter	2-23-54	7-29-57	72	4
Order	12-2-53	7-29-57	98	2
Letter	2-18-54	7-29-57	98	3
Order	12-2-53	7-29-57	99	2
Letter	4-1-54	7-29-57	99	3
[fol. 196]				
Order	12-2-53	7-29-57	100	3
Letter	1-21-54	7-29-57	100	4
Order	12-2-53	7-29-57	104	4
Letter	2-23-54	7-29-57	104	5
Order	12-2-53	7-29-57	107	4
Letter	2-23-54	7-29-57	107	5
Order	12-2-53	7-29-57	108	4
Letter	2-23-54	7-29-57	108	5
Order	12-2-53	7-29-57	109	4
Letter	2-23-54	7-29-57	109	5
Order	12-2-53	7-29-57	70	2
Order	12-2-53	7-31-57	110	4
Letter	2-23-54	7-31-57	110	5
Order	12-2-53	7-31-57	112	1
Letter	2-23-54	7-31-57	112	2

cc: P. F. Schlicher, Attorney

The Texas Company

135 E. 42nd Street

New York 17, New York

Mr. M. L. Terry

The Texas Company

P. O. Box 2420, Tulsa 3, Oklahoma

[fol. 197]

EXHIBIT L-11 TO DEFENDANT'S REQUESTS FOR
ADMISSIONS BY PLAINTIFF

FEDERAL POWER COMMISSION

WASHINGTON 25

The Texas Company.

P. O. Box 2332

Houston 1, Texas

Gentlemen:

This is to advise you that the rate filings listed at the bottom of this letter have been accepted for filing, that notice is hereby waived and that such rate schedules shall be effective as of the dates shown.

In the event that any of the documents comprising the listed rate schedules contain provisions for future automatic adjustments in rates and charges based upon new or increased taxes, prices paid for gas by or to others, price re-determination provisions, or any similar provision, your attention is directed to the fact that such provisions, when invoked to change the effective rates and charges, will constitute a change in such rates and charges within the meaning of Section 4(d) of the Natural Gas Act and Section 154.94 of the Commission's Regulations under such Act as promulgated by this Commission's Order No. 174-B. The Act and the Commission's Rules require that such changes be filed with the Commission not more than 90 days nor less than 30 days prior to the proposed effective date thereof.

This acceptance for filing shall not be construed as a waiver of the requirements of Section 7 of the Natural Gas Act, as amended; nor shall it be construed as constituting approval of any rate, charge, classification, or any rule, regulation or practice affecting such rate or service contained in the rate filing; nor shall such acceptance be deemed as recognition of any claimed contractual right or obligation associated therewith; and such acceptance is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any pro-

ceeding now pending or hereafter instituted by or against your company.

In future correspondence with the Commission concerning the rate schedules listed below, please refer to the FPC Gas Rate Schedule designation furnished you herewith, including the name of the independent producer and the rate schedule and supplement numbers.

By direction of the Commission,

J. H. Gutridge
Secretary

Description of Document		Date of Letter of Transmittal	Rate Schedule Designation <i>The Texas Company</i> FPC Gas Rate Schedule No.	Supple- ment No.	Effective Date
Notice of Change Undated	6-13-57	72	5	7-1-57	
Notice of Change Undated	6-13-57	98	4	7-1-57	
Notice of Change Undated	6-13-57	99	4	7-1-57	
Notice of Change Undated	6-13-57	100	5	7-1-57	
Notice of Change Undated	6-13-57	106	6	7-1-57	
Notice of Change Undated	6-13-57	107	6	7-1-57	
Notice of Change Undated	6-13-57	108	6	7-1-57	
[fol. 198]					
Notice of Change Undated	6-13-57	109	6	7-1-57	
Notice of Change Undated	6-13-57	70	4	7-1-57	
Notice of Change Undated	6-13-57	110	6	7-1-57	
Notice of Change Undated	6-13-57	112	3	7-1-57	

cc: P. F. Schlicher, Attorney
The Texas Company
135 E. 42nd Street
New York-17, New York

Mr. M. L. Terry
The Texas Company
P. O. Box 2420
Tulsa 3, Oklahoma

[fol. 199] [File endorsement omitted]

Acknowledgment of service (omitted in printing).

[fol. 200]

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

No. 671, Civil Action, 1958

CITIES SERVICE GAS COMPANY, a corporation, Plaintiff,

v.

THE TEXAS COMPANY, a corporation, Defendant.

STIPULATION AND ORDER FOR AMENDMENTS OF COMPLAINT
AND ANSWER—Filed December 23, 1958

Counsel for the respective parties, pursuant to Rule 15(a) of this Court, agree:

1. That plaintiff's complaint be hereby amended:

(a) by adding between paragraphs 3 and 4 of the present complaint the following new paragraph:

"3A. The gas purchased by plaintiff from defendant under said Contracts was transported in the plaintiff's interstate gas pipeline system and sold in interstate commerce for resale for ultimate public consumption."; and

(b) by adding between paragraphs 9 and 10 of the present complaint the following new paragraph:

"9A. During such period plaintiff made each monthly payment, based upon said minimum price order, involuntarily and under business compulsion and duress; in order to perform its contracts with its customers; in order to perform its duties to the public, to deliver gas to its customers continuously and un-[fol. 201] interruptedly; in order to avoid the sanctions imposed by Kansas Statutes, as aforesaid; and under compulsion of the minimum price-fixing order. The increased price for gas compelled plaintiff to seek and obtain increased rates for gas delivered to its customers.";

2. That defendant's answer be hereby amended:

(a) by striking the figures "14.65" from the eleventh line on page 5 of the present answer and substituting in lieu thereof the figures "16.4";

(b) by striking the word "remands" from the first line of page 7 of the present answer and substituting in lieu thereof the word "remained";

(c) by adding between paragraphs 3 and 4 of the present answer the following new paragraph:

"3A. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3A, added by amendment between paragraphs 3 and 4 of the original complaint; except that defendant alleges that a large part of all the gas referred to in the complaint—the exact amount being known to plaintiff only—was gas destined never to leave the State of Kansas, but, to be sold and ultimately consumed in intrastate commerce, rather than in interstate commerce."; and

(d) by adding between paragraphs 9 and 10 of the present answer the following new paragraph:

[fol. 202] "9A. Paragraph 9A, added by amendment between paragraphs 9 and 10 of the original complaint, is denied."; and

3. That the answer as amended herein shall constitute a responsive pleading to the complaint as amended herein, and no further answer is required in response to the complaint as amended herein.

John J. Morris, Jr., Howard L. Williams, Delaware Trust Building, Wilmington, Delaware, Attorneys for Plaintiff.

Morris, Nichols, Arsht & Tunnell, James M. Tunnell, Jr., Andrew B. Kirkpatrick, Jr., 3000 duPont Building, Wilmington, Delaware, Attorneys for Defendant.

So Ordered this twenty-second day of December, 1958,
Albert J. Stiftel, J.

[fol. 204]

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Civil Action No. 671 1958

CITIES SERVICE GAS COMPANY, a corporation, Plaintiff,

v.

THE TEXAS COMPANY, a corporation, Defendant.

PLAINTIFF'S REQUESTS FOR ADMISSIONS BY DEFENDANT—
Filed January 19, 1959

Plaintiff requests, pursuant to Rule 36 (a) of this Court, that within ten days after service hereof defendant make the following admissions, subject to the provisions of Rule 36 (b) of this Court:

1. (a) Except for the dots making "3. 1, 54 C N B" and the inverted figures "106356" under the word "Oklahoma", that the writing attached hereto, marked Exhibit "A", is a complete and accurate copy of the face of a voucher check received by defendant from plaintiff.
- (b) That defendant placed its endorsement on the reverse side of the voucher check referred to in 1 (a).
- (c) That defendant received the proceeds and benefits of the voucher check referred to in 1 (a).
- (d) That the writing attached hereto, marked Exhibit "B" is a complete and accurate copy of a letter written by J. H. Johnson of The Texas Company to plaintiff, dated March 2, 1954.
- (e) That J. H. Johnson was authorized by defendant to write, in defendant's behalf, the letter referred to in 1 (d).
- (f) Excluding the ink description in bottom right-hand corner thereof, that the writings attached hereto, marked

Exhibit "C-1 through 21" are a complete and accurate copy of the gas statements which were received by defendant at the same time defendant received from plaintiff the voucher check referred to in 1 (a).

(g) That the statement on the voucher check referred to in 1 (a) refers to the conditions upon which plaintiff paid [fol. 205] and defendant accepted payment for the volumes of gas shown in Exhibit "C-1 through 21."

(h) That voucher checks similar in purport to the voucher check referred to in 1 (a) were issued by plaintiff and accepted by defendant with reference to monthly volumes of gas delivered by defendant and received by plaintiff during the period January 23, 1954 to November 22, 1957.

(i) That gas statements similar in purport to those shown in Exhibit "C-1 through 21" accompanied each voucher check referred to in 1 (h).

(j) That the change in the price for gas delivered during the period January 1 to January 22, 1954, as compared with the gas delivered during the period December 23, 1953 through December 31, 1953, as shown on the gas statement marked Exhibit C-1 through 20, occurred because the Kansas 11¢ Price Order became effective January 1, 1954.

(k) That defendant was benefited by its receipt of the change in the price of gas required by the Kansas 11¢ Price Order.

(l) That defendant did not object or protest in writing to plaintiff concerning the content of the letter from plaintiff to defendant dated January 21, 1954, a copy of which is attached to Defendant's Requests to Plaintiff for Admissions, marked Exhibit "L(9)-8."

(m) That the January 21, 1954 letter referred to in 1 (l) as being marked Exhibit "L (9) -8" is the same January 21, 1954 letter referred to in the statement on the voucher part of the check referred to in 1 (a) and is the same letter referred to in the statement on the voucher

part of subsequent voucher checks issued by plaintiff to defendant relating to gas covered by the three contracts involved in this action. .

(n) That defendant did not object or protest in writing to plaintiff concerning either the statement upon the voucher part of the check referred to in 1 (a) or to a similar statement appearing upon any subsequent voucher check issued by plaintiff to defendant during the period covered by the Amended Complaint.

2. (a) That defendant's Federal Power Commission Rate Schedules 68 and 69, Docket No. G-4824, have been rejected and canceled by the Federal Power Commission.

(b) That the Federal Power Commission has not accepted rate filings by defendant in place of such rejected and canceled Rate Schedules 68 and 69.

(c) That the Federal Power Commission has vacated defendant's Certificate of Public Convenience and Necessity relating to the sales of gas under Defendant's Rate Schedules 68 and 69, Docket No. G-4824.

(d) That the Federal Power Commission has not issued to defendant a Certificate or Certificates of Public Convenience and Necessity in place of such vacated Certificate.

3. That a true, complete and accurate copy of Sections 55-708, 709 and 710, General Statutes of Kansas, 1949, is attached to Plaintiff's Amended Complaint and marked Exhibit "D".

4. (a) That the following statement appeared upon each voucher check received and accepted by defendant during the period January 1, 1954 to November 22, 1957, namely:

"In full settlement of gas purchased for the period ending (appropriate date here inserted on each check), subject to the provisions of letters dated August 25, 1953 and January 21, 1954, with reference to gas purchased in Kansas."

(b) That defendant has not filed the statement referred to in 4 (a), or a copy thereof, with Federal Power Commis-

sion in connection with any of its filings with that Commission relating to the gas covered by any of the three contracts involved in this action.

5. (a) That the gas price of 11¢ per Mcf measured at 14.65 p.s.i.a. received by defendant during the period covered by the Amended Complaint was a price ordered by the Kansas Corporation Commission by its 11¢ Price Order.

(b) That the gas price of 11¢ per Mcf measured at 14.65 p.s.i.a. received by defendant during the period covered by the Amended Complaint was not a price for gas negotiated between plaintiff and defendant.

(c) That the gas price of 11¢ per Mcf measured at 14.65 p.s.i.a. received by defendant during the period covered by the Amended Complaint is not a weighted average of prices for Kansas-Hugoton gas paid by plaintiff to others pursuant to gas purchase contract negotiated between plaintiff and others.

6. (a) That the following respective volumes of gas measured at 14.65 deviated and price at 11¢ per Mcf, would have the value in money equal to that set out opposite each such rate, namely:

[fol. 207]

<i>Volumes</i>	<i>Value in Money</i>
3,250,331	\$357,536.41
6,859,133	754,504.63
471,643	51,880.73

(b) That the following respective volumes of gas measured at 16.4 as provided in the June 16, 1949 Contract, priced at the rate per Mcf as set out opposite each such volume, would have a value in money equal to that set out opposite each such rate, namely:

<i>Volumes</i>	<i>Rate</i>	<i>Value in Money</i>
31,268	7.9480¢	\$ 2,485.18
102,706	7.8351¢	8,047.12
98,938	7.8544¢	7,770.99
25,932	7.8555¢	2,037.09
2,581,809	8.0101¢	206,805.48
77,641	7.9480¢	\$ 6,170.91
244,566	7.8351¢	19,161.99
206,278	7.8544¢	16,201.90
92,452	7.8555¢	7,262.57
5,359,371	8.0101¢	429,281.97
8,740	7.9480¢	\$ 694.66
22,769	7.8351¢	1,783.79
13,091	7.8544¢	1,028.22
3,650	7.8555¢	286.73
363,842	8.0101¢	29,144.11

(c) That when measured in British Thermal Units, as provided in the June 16, 1949 Contract, the gas produced and delivered to plaintiff from the following wells during the period covered by the Amended Complaint had the heating value, respectively, set out opposite each such well, namely:

<i>Well Name</i>	<i>Station No.</i>	<i>BTU Heating Value</i>
Pruitt #1	5719	961
Packer #1	5720	949
Wheeler #1	5721	926
T. Skinner #1	5722	965
Schweitzer #1	5723	948
Rittenour	5727	942

[fol. 208]. (d) That the gas produced from a respective well referred to in 6 (c) was measured through a meter bearing the station number, respectively, set out opposite the name of each such well in 6 (c) and that all such wells are located in what is commonly called "Pleasant Valley Block."

(e) That for the purposes of the matters involved in this action, the heating value of the gas produced from the wells referred to in 6 (c) was unchanged during the period covered by the Amended Complaint.

7. (a) That the writing attached hereto marked Exhibit "E" is a complete and accurate copy of a letter written by H. F. Johnson of The Texas Company to Columbian Fuel Corporation dated July 30, 1957.

(b) That H. F. Johnson was authorized by defendant to write, in defendant's behalf, the letter referred to in 7 (a).

(c) That the writing hereto attached marked Exhibit "F" is a complete and accurate copy of a letter dated August 2, 1957, received by defendant from Columbian Fuel Corporation.

(d) That the writing hereto attached marked Exhibit "G" is a complete and accurate copy of a letter dated August 9, 1957, received by defendant from plaintiff.

(e) That the proceeds accruing to the full eight-eighths interest in gas purchased by plaintiff under the June 16, 1949 Contract for the period June 23, 1957 through November 22, 1957 were pursuant to the letters referred to in 7 (a), (c), and (d) received by defendant.

8. (a) That the writing attached hereto marked Exhibit "H" is a complete and accurate copy of a letter dated July 12, 1957, received by and addressed to defendant and written by J. H. Gutride, Secretary, Federal Power Commission.

(b) That the writing attached hereto marked Exhibit "I" is a complete and accurate copy of letter written by Paul F. Schlicher of defendant, dated July 29, 1957, addressed to J. H. Gutride, Secretary, Federal Power Commission, Washington 25, D. C.

(c) That Paul F. Schlicher was authorized by defendant to write, on behalf of defendant, the letter referred to in 8 (b).

(c) That the letter referred to in 8 (b) was written in response to the letter referred to in 8 (a).

(e) That, until July 31, 1957, the 11¢ Minimum Price [fol. 209] Order of the State Corporation Commission of Kansas, dated December 2, 1953, Docket No. 44,079-C (C-3216) was not filed by defendant with Federal Power Commission in Defendant's F.P.C. Rate Schedule No. 100.

(f) That the writing attached hereto marked Exhibit "J" is a complete and accurate copy of letter received by and addressed to defendant dated May 15, 1958, from Federal Power Commission pertaining to Defendant's F.P.C. Rate Schedules Nos. 68 and 69.

9. That defendant has not filed with the Federal Power Commission, in connection with any of its filings with that Commission related to the gas involved in this action, the following:

1. The Kansas Pressure Base Order, dated May 20, 1953, effective July 1, 1953, issued by the Kansas State Corporation Commission, in its Docket No. 34,780-C (C-1825).

2. The July 17, 1953 letter, a true and correct copy of which is marked Exhibit "D" and attached to Defendant's Requests for Admissions by Plaintiff.

3. The August 25, 1953 letter, a true and correct copy of which is marked Exhibit "E" and attached to Defendant's Requests for Admissions by Plaintiff.

4. The statement referred to in 4 (a) contained on each voucher check there referred to.

10. That the writing attached hereto, marked Exhibit "K", is a complete and accurate copy of Order of the State Corporation Commission, State of Kansas, Docket No. 34,780-C (C-1825) issued May 20, 1953, effective July 1, 1953.

John J. Morris, Howard L. Williams, Of: Morris, James, Hitchens & Williams, 701 Bank of Delaware Building, Wilmington, Delaware, Attorneys for Plaintiff.

C. C. Mount, O. R. Stites, Gordon J. Quilter, First National Building, Oklahoma City, Oklahoma, Of Counsel.

[fol. 210]

EXHIBIT A TO PLAINTIFF'S REQUESTS FOR
ADMISSIONS BY DEFENDANT

V. R.

2-24-54 C. R.

CITIES SERVICE GAS COMPANY

OKLAHOMA CITY, OKLAHOMA

In full settlement of gas purchased
for the period ending 1-22-54, subject
to provisions of letters dated 8-25-53,
and 1-21-54 with reference to gas
purchased in Kansas.

18,444.17

VOUCHER NO.

CITIES SERVICE GAS COMPANY

OKLAHOMA CITY, OKLA.

THE CHASE NATIONAL BANK
OF THE CITY OF NEW YORK
1-74 NEW YORK, N. Y.

FEB 25 1954

CHECK NO.
12586

106356

PAY EIGHTEEN THOUSAND FOUR HUNDRED FORTY FOUR AND
17/100 \$18,444.17

IN FULL SETTLEMENT OF ACCOUNT AS SHOWN
IN ACCOMPANYING VOUCHER

TO
THE
ORDER
OF

THE TEXAS COMPANY
P. O. Box 2420
TULSA, OKLAHOMA

CITIES SERVICE GAS COMPANY

/s/ C. J. MARTIN

/s/ (Illegible)

COUNTERSIGNATURE REQUIRED WHEN DRAWN FOR MORE
THAN \$200.00

[fol. 211]

EXHIBIT B TO PLAINTIFF'S REQUESTS FOR
ADMISSIONS BY DEFENDANT

THE TEXAS COMPANY

TEXACO PETROLEUM PRODUCTS

(Emblem)

PRODUCING DEPARTMENT

OKLAHOMA DIVISION

J. H. JOHNSON

SUPERINTENDENT, GAS AND GASOLINE PLANTS

P. O. BOX 2420

TULSA 25 OKLAHOMA

March 2, 1954

Cities Service Gas Company
First National Building
Oklahoma City 1, Oklahoma

Gentlemen:

We have your check No. 12586 dated February 25, 1954, in the amount of \$18,444.17 covering gas purchases for the month of January.

Included in this remittance was an amount of \$65.96 covering The Texas Company's interest in gas from the Texas-Skelly State No. 1, NE/4 Section 2-1N-11 ECM, Texas County, Oklahoma. Payment for gas from this property should be made to us addressed to Box 1720, Fort Worth, Texas, and we will appreciate it if you will change your records so that they will receive subsequent payments for such gas.

Yours very truly,

THE TEXAS COMPANY
PRODUCING DEPARTMENT

By /s/ J. H. JOHNSON
J. HOWARD JOHNSON

GLP:BW

[fol. 212]

[File endorsement omitted]

Acknowledgment of service (omitted in printing).

[f.j.l. 213]

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Civil Action No. 671 1958

CITIES SERVICE GAS COMPANY, a corporation, Plaintiff,

v.

THE TEXAS COMPANY, a corporation, Defendant.

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT—
Filed January 30, 1959

Defendant hereby moves for summary judgment and for an order fixing an affidavit and brief schedule thereon.

The grounds for this motion for summary judgment are that:

1. During the period from January 1, 1954, to July 16, 1954, the *only* lawful price for the sales of natural gas by defendant to plaintiff, referred to in the complaint herein, was fixed by a regulation of the State of Kansas, and plaintiff does not base its claim upon that regulation;

2. During the period after July 16, 1954, the *only* lawful price for the sales of natural gas by defendant to plaintiff, referred to in the complaint herein, was fixed by a rate filed with and accepted by the Federal Power Commission, under its regulations prescribed under the Natural Gas Act, 15 U.S.C.A. §§ 717(a), *et seq.*, and plaintiff does not base its claim upon that filed rate; and,

[fol. 214] 3. If the Kansas regulation had not been in effect from January 1, 1954, to July 16, 1954, or if thereafter defendant had had no rate on file with the Federal Power Commission, the *only* lawful price for the sales of natural gas by defendant to plaintiff, referred to in the complaint herein, would have been that prescribed by the Natural Gas Act, 15 U.S.C.A. §§ 717(a), *et seq.*, and plaintiff does not base its claim upon that Act.

This motion for summary judgment is based upon the facts established by the pleadings, plaintiff's answers to defendant's interrogatories, plaintiff's responses to defendant's requests for admissions, affidavits to be filed in support hereof, and such other affidavits as are filed herein pursuant to the schedule fixed by the order entered on this motion.

Morris, Nichols, Arsht & Tunnell, James M. Tunnell, Jr., Andrew B. Kirkpatrick, Jr., Attorneys for Defendant, 3000 duPont Building, Wilmington, Delaware.

Of Counsel: Paul F. Schlicher, 24th Floor Chrysler Bldg., 135 East 42nd Street, New York, New York.

[fol. 215] [File endorsement omitted]

Acknowledgment of service (omitted in printing).

[fol. 216]

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Civil Action No. 671, 1958

CITIES SERVICE GAS COMPANY, a corporation, Plaintiff,

—vs.—

THE TEXAS COMPANY, a corporation, Defendant.

AFFIDAVIT OF ANDREW B. KIRKPATRICK, JR.—

Filed February 9, 1959

Andrew B. Kirkpatrick, Jr., being duly sworn, deposes and says:

The text of each of the following documents is a true and accurate copy of the text of documents in the files of the Federal Power Commission:

1. Exhibits A through D hereof;

2. Exhibits L-1 and L-1(2) of defendant's requests for admissions served herein on November 24, 1958 (hereinafter "defendant's requests"); exhibits L-2 page 1 through L-2 page 4 of defendant's requests; exhibits L-3 and L-3(2) through L-3(17) of defendant's requests; copy of letter dated September 8, 1949 and attached as part of exhibit A of the answer herein; copy of 10 page "Gas Purchase Contract" attached as part of exhibit A of the answer herein and exhibits A, A(2), and A(3) of defendant's requests; exhibits L(4)(1) through L(4)(5) of defendant's requests; exhibit L-5(1) of defendant's requests, except that in the Federal Power Commission files the number "5" after "Supplement No." has been marked out and the number "3" has been inserted; exhibits L-5(3) through L-5(7) of defendant's requests, except that the number "5" after "Supplement No." has been marked out and the number "3" has been [fol. 217] inserted in the document in the files of the Federal Power Commission of which exhibits L-5(3) and L-5(4) of defendant's requests are copies; exhibits L-6 and L-6(2) of defendant's requests, exhibit L-7 of defendant's requests, exhibit L-8 of defendant's requests; exhibit L-9 of defendant's requests; exhibits L-9(2) through L-9(7) of defendant's requests; exhibit L-9(8) of defendant's requests, exhibits L-10(1) and L-10(2) of defendant's requests, and exhibits L-11(1) and L-11(2) of defendant's requests;

3. Exhibits E through I hereof; exhibits L-4(1) through L-4(5) of defendant's requests; exhibit J hereof; exhibits L-6 and L-6(2) of defendant's requests; exhibit L-7 of defendant's requests; exhibit L-8 of defendant's requests; exhibits K through N hereof; and exhibit D hereof;

4. Exhibits O through S hereof; exhibits L-4(1) through L-4(5) of defendant's requests; exhibit T hereof; exhibits L-6 and L-6(2) of defendant's requests; exhibit L-7 of defendant's requests; exhibit L-8 of defendant's requests; exhibits K through N hereof; and exhibit D hereof;

5. Exhibits U through W hereof;

6. Exhibits X through Z hereof and exhibits AA through AF hereof;

7: Exhibit AG hereof; and,

8. Exhibit AH hereof; exhibit C of the Answer herein, except that the document in the file of the Federal Power Commission of which this is a copy is dated in the first line the "8th day of March"; exhibits AI through AZ hereof; and exhibits BA and BB hereof.

Andrew B. Kirkpatrick, Jr.

Sworn to and subscribed before me the 6th day of February, 1959.

Evelyn P. Cashell, Notary Public.

(Seal)

[fol. 218]

EXHIBIT A TO AFFIDAVIT

APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

The Texas Company
Producing Department
Oklahoma Division

CONTENTS

Statement of Pertinent Facts	Pages 1-28
Authorization to File for Others	Exhibit A
General Key Maps	Exhibit B

[fol. 219]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

In the Matter of)
) Docket No. G-4824
The Texas Company)

APPLICATION FOR CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY
FILED PURSUANT TO ORDER NO. 174-A

COMES NOW The Texas Company and files this its application for a certificate of public convenience and neces-

sity pursuant to Section 157.23(a), Sub-Chapter E, Regulations under the Natural Gas Act, for the sale of gas to the several companies as more fully described under the several designations in the subdivisions of Section 4 hereof.

It also applies hereby for such a certificate on behalf of those persons who have authorized such action and whose names appear in Exhibit "A" attached hereto and made a part hereof.

1.

The exact legal name of Applicant is The Texas Company and it is organized under the laws of the State of Delaware, has a principal place of business in the City of Houston, Texas and is authorized to do business in all [fol. 220] forty-eight (48) states and the District of Columbia.

2.

It has no predecessor in interest engaged in the transportation or sale of natural gas on June 7, 1954.

3.

The name, title and post office address of the persons to whom correspondence or communications in regard to this application is to be addressed is:

W. V. Vietti, Division Manager
Gas Division
The Texas Company
P. O. Box 2332
Houston 1, Texas

It is respectfully requested that copies of such correspondence or communications be sent to:

Paul F. Schlicher, Attorney
The Texas Company
135 East 42nd Street
New York 17, New York

and to:

M. L. Terry, Division Manager
Producing Department
The Texas Company
P. O. Box 2420
Tulsa 2, Oklahoma

[fol. 221]

4.

CONTRACT No. O-1

Applicant entered into a contract with Cities Service Gas Company dated the 16th day of June, 1949, covering the sale of gas from Applicant's leases in the Hugoton Field, Stevens County, Kansas. Deliveries were being made under subject contract on June 7, 1954. Applicant is informed by the purchasing company that such gas is ultimately transported in interstate commerce.

(i) The sources of gas produced by Applicant are from Applicant's leases in its Moscow and Pleasant Valley blocks in the Hugoton Field, Stevens County, Kansas, as shown on Part 1 of Exhibit "B" which is attached hereto and made a part hereof.

The gas produced from the Moscow and Pleasant Valley blocks in the Hugoton Field, Stevens County, Kansas is delivered at the side gate of the well head as shown on Part 1 of Exhibit "B".

(ii) Applicant has no gas lines.

(iii) No communities were served or proposed to be served on June 7, 1954.

(iv) There are no main line industrial customers.

(v) There are no major appurtenant properties or facilities.

[fol. 222]

CONTRACT No. O-2

Applicant made arrangements with Cities Service Gas Company as evidenced by letter dated the 17th day of December, 1951, for the sale of gas from Applicant's leases in the Hugoton Field, Seward County, Kansas, on a day-to-day basis. Deliveries were being made under said arrange-

ment on June 7, 1954. Applicant is informed by the purchasing company that such gas is ultimately transported in interstate commerce.

(i) The sources of gas produced by Applicant are from Applicant's leases in the Hacker-Engel and Shorb-Engel Gas Units in the Hugoton Field, Seward County, Kansas, as shown on Part 1 of Exhibit "B" which is attached hereto and made a part hereof.

The gas produced from the Hacker-Engel and Shorb-Engel Gas Units in the Hugoton Field, Seward County, Kansas is delivered at the side gate of the well head as shown on Part 1 of Exhibit "B".

(ii) Applicant has no gas lines.

(iii) No communities were served or proposed to be served on June 7, 1954.

(iv) There are no main line industrial customers.

(v) There are no major appurtenant properties or facilities.

[fol. 223]

CONTRACT No. O-3

Applicant made arrangements with Cities Service Gas Company as evidenced by letter dated the 20th day of December, 1951, for the sale of gas from Applicant's lease in the Hugoton Field, Grant County, Kansas, on a day-to-day basis. Deliveries were not being made under subject contract on June 7, 1954, due to an over production of allowables, but will be resumed subsequently. Applicant is informed by the purchasing company that such gas is ultimately transported in interstate commerce.

(i) The sources of gas produced by Applicant is from Applicant's lease in the Loewen Gas Unit in the Hugoton Field, Grant County, Kansas as shown on Part 1 of Exhibit "B" which is attached hereto and made a part hereof.

The gas produced from the Loewen Gas Unit in the Hugoton Field, Grant County, Kansas, is delivered at the side gate of the well head as shown on Part 1 of Exhibit "B".

(ii) Applicant has no gas lines.

(iii). No communities were served or proposed to be served on June 7, 1954.

(iv) There are no main line industrial customers.

(v) There are no major appurtenant properties or facilities.

5.

[fol. 224] This application is made under protest and to avoid the penalties provided in Section 21 of the Natural Gas Act. It is also made subject to Applicant's Application for Rehearing in respect to Order 174-A, filed August 25, 1954, Federal Power Commission Docket R-138, any and all resulting decisions, determinations, proceedings, orders, rules, or regulations, and any judicial appeals therefrom or reviews thereof. By filing this application, Applicant does not admit that it or the sales of gas embraced by the above-mentioned contract is subject to regulation by the Commission and Applicant hereby expressly reserves not only its legal and equitable rights to contest such regulation but also any and all contractual rights it now has or may in the future have by virtue of the terms and provisions of said contract, whether or not same conflict with or may be contrary to the provisions of any order, rule, regulation, decision or determination that has or may be issued or adopted by the Commission.

6.

Applicant's description or showing of any facilities in this application or in any Exhibit attached hereto is intended [fol. 225] only for the information of the Commission, and not for the purpose of requesting a certificate of public convenience and necessity for the construction or operation of such facilities. All such facilities constitute, in the opinion of the Applicant, facilities for the production and/or gathering of natural gas within the meaning of Section 1 (b) of the Natural Gas Act whether or not Applicant is a natural gas company and, therefore, no certificate of public convenience and necessity is required or is sought for such facilities. Application is hereby made only for a certificate of public convenience and necessity authorizing

the sale of natural gas in the circumstances above described.

WHEREFORE, subject to the foregoing, Applicant respectfully requests that it be issued a certificate of public convenience and necessity authorizing it to make and continue the sales under the contracts hereinabove referred to.

Respectfully submitted,

THE TEXAS COMPANY

By /s/ W. V. VIETTI
W. V. Vietti
Division Manager
Gas Division

[fol. 226]

THE STATE OF TEXAS)
COUNTY OF HARRIS)

BEFORE ME, the undersigned authority, on this day personally appeared W. V. Vietti, who being by me first duly sworn, on oath deposes and says:

That he is Division Manager, Gas Division, Producing Department of The Texas Company and is duly authorized to make this affidavit; that he has read the foregoing Application, is familiar with the contents thereof, has examined the Exhibits attached thereto and that the facts and allegations contained in the Application and shown on the Exhibits are true and correct to the best of his information, knowledge and belief.

/s/ W. V. VIETTI,

SUBSCRIBED AND SWORN TO before me this the day of
Oct 19, 1954.

E. A. COWART
Notary Public in and for
Harris County, Texas

[fol. 227]

EXHIBIT B TO AFFIDAVIT

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Jerome K. Kuykendall, Chairman; Claude
Commissioners: L. Draper, Seaborn L. Digby, Frederick
Stueck and William R. Connole.

In the Matter of

} Docket Nos. G-4820
} through G-4824

The Texas Company)

FINDINGS AND ORDER ISSUING CERTIFICATES
OF PUBLIC CONVENIENCE AND NECESSITY
AND DISMISSING APPLICATIONS IN PART

The Texas Company (Applicant), a Delaware corporation and independent producer with its principal place of business in Houston, Texas, filed, on November 12, 1954, as amended July 5, 1955, with respect to Docket Nos. G-4820, G-4821 and G-4822, and on November 14, 1955, with respect to Docket No. G-4820, the above-listed five applications for certificates of public convenience and necessity pursuant to Section 7(c) of the Natural Gas Act, authorizing the acts or operations hereinafter described. Said acts or operations were performed on June 7, 1954, with the possible exception of the sale in Contract L-1 in Docket No. G-4821, and have been performed continuously since that date unless otherwise noted. Applicant has filed such applications on its behalf only, and not as representative for any other person.

As a preliminary matter, it is noted that a number of the sales set forth in four of the applications involve materially similar circumstances in which Applicant owns an interest in acreage productive of natural gas, but does not operate such properties, does not take its share of the gas in kind or has not entered into a gas-sales contract for the sale of its share of the gas, and therefore the operator markets Applicant's share of the gas produced. Under the decision in *Humble Oil & Refining Company*, Docket Nos. G-6753, et al., issued March 10, 1955, an application requesting a certificate for the sale of gas marketed under the above-

described circumstances must be dismissed. Motion to dismiss with respect to six of such transactions upon jurisdictional grounds were denied by order issued herein November 8, 1955. Accordingly, that part of the application in Docket No. G-4820 which sets forth the sales designated by the Applicant as Contracts S-16, S-17, S-18, S-19, S-25 and S-27, that part of the application in Docket No. G-4821 which sets forth the sales designated by the Applicant as Contracts L-3, L-4, L-5 and L-6, that part of the application in Docket No. G-4822 which sets forth the sale designated by the Applicant as Contract L-14, and that part of the application in Docket No. G-4824 which sets forth the sales designated by the Applicant as Contracts O-4 and O-13 will be dismissed as hereinafter ordered.

[fol. 228] *With respect to the sale designated by the Applicant as Contract S-21 in Docket No. G-4820, concerning deliveries of gas to Texas Eastern Transmission Corporation from jointly owned property in the North Hostetter Field, McMullen County, Texas, wherein Applicant was neither the operator nor a party to a gas-sales contract, by an amended filing Applicant shows that it has now entered into a sales contract dated June 6, 1955, with Texas Eastern Transmission Corporation for the disposition of such gas. This contract is in the form of an amendment to Contract S-10, hereinafter set forth. Applicant seeks to withdraw that part of its application in Docket No. G-4820 denominated Contract S-21. Rather it appears more appropriate to dismiss this portion of the application in Docket No. G-4820 under the rule in the *Humble* order, and include deliveries made under the June 6, 1955, amended contract under Contract S-10. With reference to the sales designated Contract O-19 and O-20 in Docket No. G-4824 involving deliveries of gas to Colorado Interstate Gas Company from properties in the Greenwood Field, Morton County, Kansas. Applicant has been issued a certificate of public convenience and necessity on May 24, 1955, in Docket No. G-8087 covering these and other deliveries of gas to Colorado Interstate Gas Company. Since deliveries previous to such authorization were made by the unit operator under an agreement to which Applicant was not a party, that part of the application in Docket No. G-4824 designated Contracts O-19 and O-20 should be dismissed under the rule in the *Humble* order.

In Docket No. G-4820 Applicant sells natural gas as follows, all in the State of Texas:

<u>Contract Number</u>	<u>Name of Purchasing Company</u>	<u>Date of Contract</u>	<u>Field</u>	<u>County</u>
	Tennessee Gas Transmission Company	11-11-53	Ace	Polk
	Tennessee Gas Transmission Company	6-12-52	Edinburg	Hidalgo
	Tennessee Gas Transmission Company	8- 1-50	Government Wells	Duval
	Tennessee Gas Transmission Company	4- 1-52	Hagist Ranch	Duval
	Tennessee Gas Transmission Company	4- 1-52	Hagist Ranch	Duval
229]	Tennessee Gas Transmission Company	10- 2-50	La Reforma	Starr
	Tennessee Gas Transmission Company	6-12-52	Raymondville	Willacy
	Tennessee Gas Transmission Company	6-10-53	Santellana	Hidalgo
	Texas Eastern Transmission Corporation	6-20-53	Holzmark-Wilcox	Bee
	Texas Eastern Transmission Corporation	6-20-53 & 6- 6-55	Ragsdale and North Hostetter	Bee and McMullen
	Texas Eastern Transmission Corporation	6- 1-53	Rudman and West Cosden	Bee
	Texas Eastern Transmission Corporation	4- 1-52	San Domingo	Bee

<u>Applicant's Contract Number</u>	<u>Name of Purchasing Company</u>	<u>Date of Contract</u>	<u>Field</u>	<u>County</u>
S-13	Texas Eastern Trans- mission Corporation	4- 1-53	San Domingo	Bee
S-14	Texas Eastern Trans- mission Corporation	10-23-53	South Cotton- wood Creek	DeWitt
S-15	Texas Illinois Natural Gas Pipe Line Company	1-23-50	Old Ocean	Matagorda Brazoria
S-20	Tennessee Gas Trans- mission Company	4-24-54	Chesterville	Colorado
S-22	United Gas Pipe Line Company	11- 9-50	Weesatche	Goliad
S-23	Transcontinental Gas Pipe Line Corporation	9-12-47	La Gloria	Jim Wells
S-24	Texas Illinois Natural Gas Pipeline Company	1-25-50	La Gloria	Jim Wells
S-26	Tennessee Gas Trans- mission Company	1-14-55	South Deckers Prairie	Montgomery

[fol. 230] With reference to Applicant's Contracts S-20 and S-26 in Docket No. G4820, at the time the application was filed Applicant was neither the operator nor a party to a gas-sales contract involving the properties jointly owned, but has since entered into sales contracts as listed above.

In Docket No. G-4821 Applicant sells natural gas as follows, all in the State of Louisiana:

Applicant's Contract Number	Name of Purchasing Company	Date of Contract	Field	Parish
1	United Gas Pipe Line Company	6- 1-54	Duck Lake	St. Martin and St. Mary
2	United Gas Pipe Line Company	6-11-52	Houma	Terrebonne
7	United Gas Pipe Line Company	4-29-52	Lisbon	Claiborne
9	Atlantic Refining Company	7-13-51	Bayou Sale	St. Mary
10	Magnolia Petroleum Company	9-19-52	East Mud Lake	Cameron

In Docket No. G-4821, Applicant's Contracts L-9 and L-10, Applicant states that these sales to Atlantic Refining Company and Magnolia Petroleum Company were entered into for only an interim period, after which time Applicant would sell the gas produced to United Fuel Gas Company. On October 28, 1954, Applicant was issued a certificate of public convenience and necessity in Docket Nos. G-3645 and G-3643 covering such proposed sales. Therefore, the authorizations hereinafter granted with respect to Contracts L-9 and L-10 cover only that period of time until deliveries to United Fuel Gas Company began on November 1, 1954.

In Docket No. G-4822, Applicant sells natural gas produced on acreage located in the Bethany Field, Panola County, Texas, and Caddo Parish, Louisiana, to United Gas Pipe Line Company under the terms of a contract dated March 13, 1951 (Applicant's Contract L-12) and also sells natural gas produced on acreage located in the Carthage Field, Panola County, Texas, to Texas Gas Transmission Corporation under the terms of a contract dated July 1, 1952 (Applicant's Contract L-13).

In Docket No. G-4823, Applicant sells natural gas produced on acreage located in the Baxterville Field, Lamar and Marion Counties, Mississippi, to United Gas Pipe

Line Company under the terms of a contract dated April 3, 1950 (Applicant's Contract L-11).

[fol. 231] In Docket No. G-4824, Applicant sells natural gas as follows, all in the State of Kansas with the exception of the last three sales which are made in the State of Oklahoma:

<u>Applicant's Contract Number</u>	<u>Name of Purchasing Company</u>	<u>Date of Contract</u>	<u>Field</u>	<u>County</u>
O-1	Cities Service Gas Company	6-16-49	Hugoton	Stevens
O-2	Cities Service Gas Company	12-17-51 (Letter Agreement)	Hugoton	Seward
O-3	Cities Service Gas Company	12-20-51 (Letter Agreement)	Hugoton	Grant
O-5	Hugoton Plains Gas and Oil Company	8- 3-51	Hugoton	Seward
O-6	Kansas-Nebraska Natural Gas Company	9-19-52	Hugoton	Kearny
O-7	Kansas-Nebraska Natural Gas Company	Division Order	Hugoton	Finney
O-8	Northern Natural Gas Company	1-20-53	Hugoton	Stevens
O-9	Northern Natural Gas Company	5-23-45	Hugoton	Stevens
O-10	Northern Natural Gas Company	5-18-50	Hugoton	Seward
O-11	Northern Natural Gas Company	11-18-52	Hugoton	Morton
O-12	Northern Natural Gas Company	10-22-52	Hugoton	Morton
O-14	Northern Natural Gas Company	9-22-50	Hugoton	Seward
O-15	Northern Natural Gas Company	6- 8-53	Hugoton	Morton

fol. 232]

Applicant's Contract Number	Name of Purchasing Company	Date of Contract	Field	County
0-16	Northern Natural Gas Company	10-4-50	Hugoton	Haskell
0-17	Panhandle Eastern Pipe Line Company	Pending	Hugoton	Morton
0-18	Panhandle Eastern Pipe Line Company	5-15-50	Hugoton	Morton
0-21	Lone Star Gas Company	5-26-41	Doyle	Stephens
0-22	Lone Star Gas Company	6-25-47	Doyle	Stephens
0-23	Lone Star Gas Company	4-26-48	Doyle	Stephens

Applicant's Contract 0-17, above, involves a situation wherein Panhandle Eastern Pipe Line Company is the unit operator as well as the purchaser of the gas involved. Since Panhandle is not required to obtain a certificate for a sale to itself or for the disposition of Applicant's gas, it is necessary that Applicant obtain a certificate for such transaction.

By an order issued October 5, 1955, certain petitions to intervene in this proceeding were permitted and certain others denied. Motions to dismiss upon jurisdictional grounds with respect to several of the transactions involved were denied by order issued herein on November 8, 1955.

Pursuant to due notice a public hearing was held in Washington, D. C., on June 29, July 27, September 21 and November 23, 1955, respecting the matters involved in and the issues presented by the application.

The Commission finds:

- (1) That part of the application in Docket No. G-4820 consisting of the sales designated as Contracts S-16,

S-17, S-18, S-19, S-21, S-25 and S-27, that part of the application in Docket No. G-4821 consisting of the sales designated as Contracts L-3, L-4, L-5 and L-6, that part of the application in Docket No. G-4822 consisting of the sale designated as Contract L-14 and that part of the application in Docket No. G-4824 consisting of the sales designated as Contracts O-4, O-13, O-19 and O-20 should be dismissed for the reasons set forth in the order in *In the Matter of Humble Oil & Refining Company*, Docket Nos. G-6753; *et al.*, issued March 10, 1955.

- [fol. 233] (2) Applicant, an independent producer of natural gas, is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and is, therefore, a "natural-gas company" within the meaning of the Natural Gas Act.
- (3) The sales of natural gas hereinbefore described, as more fully described in the applications, are in interstate commerce, subject to the jurisdiction of the Commission, and such sales by Applicant, together with the operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.
- (4) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.
- (5) The sales of natural gas by Applicant, together with the operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity, and certificates therefor should be issued as hereinafter ordered and conditioned.
- (6) A request during the public hearing by Staff Counsel for omission of the intermediate decision procedure

under Section 1.30(c)(2) of the Commission's Rules of Practice and Procedure was opposed by the interveners Sun Oil Company and Hassie Hunt Trust; however, the record in this proceeding demonstrates that due and timely execution of Commission functions imperatively and unavoidably requires that the intermediate decision procedure be omitted in this proceeding as hereinafter ordered and that the Commission render a decision in this proceeding.

The Commission orders:

- (A) The intermediate decision procedure be and it is hereby omitted herein in accordance with the provisions of Section 1.30 (18 CFR 1.30) of the Commission's Rules of Practice and Procedure.
- (B) That part of the application in Docket No. G-4820 consisting of the sales designated as Contracts S-16, S-17, S-18, S-19, S-21, S-25 and S-27, that part of the application in Docket No. G-4821 consisting of the sales designated as Contracts L-3, L-4, L-5 and L-6, that part of the application in Docket No. G-4822 consisting of the sale designated as Contract [fol. 234] L-14 and that part of the application in Docket No. G-4824 consisting of the sales designated as Contracts O-4, O-13, O-19 and O-20 be and are hereby dismissed for the reasons set forth in the order in *In the Matter of Humble Oil & Refining Company*, Docket Nos. G-6753, *et al.*, issued March 10, 1955.
- (C) Certificates of public convenience and necessity be and are hereby issued, upon the terms and conditions of this order, authorizing the sales by Applicant of natural gas in interstate commerce for resale, together with the continued operation of any facilities, subject to the jurisdiction of the Commission, used for such sales of natural gas in interstate commerce, as hereinbefore described and as more fully described in the application and exhibits in this proceeding.

- (D) The certificates shall be accepted in writing and under oath by Applicant within 30 days from the issuance of this order.
- (E) The certificates are not transferable and shall be effective only so long as Applicant continues the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act, and the applicable rules, regulations and orders of the Commission.
- (F) The grant of the several certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or of Section 154 of the Commission's Rules and Regulations thereunder requiring the filing of rate schedules for the services herein authorized; and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the Applicant. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objection relating to the operation of any price or related provision in the gas purchase contracts herein involved.

By the Commission.

Leon M. Fuquay,
Secretary.

Adopted: November 30, 1955

Issued: December 5, 1955

[fol. 235]

In the Matter of

)

1) Docket Nos. G-4820

) : through G-4824

The Texas Company

;

DIGBY, Commissioner, *concurring*:

I concur in the order granting a certificate of public convenience and necessity to sell natural gas. I object to any reference in the order concerning the issuance of a certificate of public convenience and necessity for the facilities of the independent producer or gatherer of gas.

A certificate of public convenience and necessity is neither required nor properly issued for construction and operation of facilities of a producer or gatherer. The action of a majority of this Commission issuing a certificate for facilities is improper for it represents an assertion of power denied to us by Congress.

We have recognized the absence of power over facilities when, in Order No. 174 and Order No. 174-A, we failed to provide any procedure whereby application could be made for a certificate authorizing their construction and operation. We did promulgate procedural rules to enable filing of applications for certificates authorizing a sale or transportation. There was not even a suggestion that at some later time we would authorize or require authorization for construction and operation of facilities.

The action heretofore taken, insofar as it made no provision with respect to facilities, was wholly consistent with the declarations of the Supreme Court in *Federal Power Commission v. Panhandle Eastern Pipe Line Company*, 337 U. S. 498, 505; *Colorado Interstate Gas Co. v. Federal Power Commission*, 324 U. S. 581, 598; *Interstate Natural Gas Company v. Federal Power Commission*, 331 U. S. 682, 690-691, and *Bhillips Petroleum Company v. State of Wisconsin*, 74 Sup. Ct. 794, 797-798. The language of the Court in these cases is clear and unambiguous. In *Federal Power Commission v. Panhandle Eastern Pipe Line Company*, *supra*, the Court stated that the "natural and clear mean-

ing" of production or gathering contained in Section 1(b) of the Act encompassed "the producing properties and gathering facilities of a natural-gas company." In *Colorado Interstate Gas Co. v. Federal Power Commission*, *supra*, the Court stated that the production or gathering exemption applies to the "physical activities, facilities and properties used in the production and gathering of natural gas." In *Interstate Natural Gas Company v. Federal Power Commission*, *supra*, the Court stated that effect must be given to the exemption of producing and gathering, and indicated clearly that facilities, properties and activities of a producer and gatherer were exempted. The Court, in *Phillips Petroleum Company v. State of Wisconsin*, *supra*, held only that a sale in interstate commerce for resale was not within the exemption of Section 1(b). The discussion with respect to facilities and the recitation of the above-cited cases represents clear recognition of the intended scope and effect of the exemption as regards facilities.

The issue to be resolved is whether the Natural Gas Act requires that a certificate of public convenience and necessity issue for construction and operation of the facilities necessary to effect a sale by a producer or gatherer in interstate commerce for resale. The issue is not whether a sale of gas in interstate commerce for resale can be made without facilities. It cannot be doubted that facilities necessary to effect a sale of natural gas in interstate commerce are facilities used in interstate commerce. Recognition of this fact cannot, however, create power in this Commission to issue, much less to require, certificates authorizing construction and operation of such facilities.

S. L. DIGBY
Commissioner

Date filed: November 30, 1955

Date of Issuance: December 5, 1955

[fol. 236]

EXHIBIT C TO AFFIDAVIT

P. Q. Box 2332

December 16, 1955

AIR MAIL—REGISTERED

Mr. Leon M. Fuquay, Secretary
Federal Power Commission
Washington 25, D. C.

Re: Docket G-424

Acceptance of Certificate of Public Convenience &
Necessity issued December 5, 1955.

Dear Sir:

Subject to the protest and other matters set forth in Paragraphs (5) and (6) of The Texas Company's Application for a Certificate of Public Convenience and Necessity, The Texas Company hereby accepts the Certificate of Public Convenience and Necessity issued by the Commission on May 24, 1955, in the above-captioned Docket.

Respectfully submitted,

THE TEXAS COMPANY

By /s/ W. V. VIETTI

RDD: SJ

State of Texas)
County of Harris)

Before me, the undersigned authority, on this day personally appeared W. V. VIETTI, who being by me first duly sworn, on oath deposes and says:

That he is Division Manager, Gas Division, Producing Department of The Texas Company and is duly authorized

* Should be Dec. 5, '55—clerical error.

to make this acceptance; that he has read the foregoing and is familiar with the contents thereof and that the facts contained therein are true and correct to the best of his information, knowledge and belief.

/s/ W. V. VIETTI

Subscribed and sworn to before me this the day of
Dec 16, 1955.

E. A. COWART
Notary Public in and for
Harris County, Texas

[fol. 236a] [File endorsement omitted]

Acknowledgment of service (omitted in printing).

[fol. 237]

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Civil Action No. 671

1958

CITIES SERVICE GAS COMPANY, a corporation, Plaintiff,

v.

THE TEXAS COMPANY, a corporation, Defendant.

AFFIDAVIT OF PAUL F. SCHLICHER—Filed February 9, 1959

District of
Columbia, ss.:

Paul F. Schlicher being duly sworn, deposes and says:

1. I am and have since January 1, 1954, been an attorney employed by The Texas Company, the defendant in the above action.

2. The Texas Company is not, and since January 1, 1954 has not, primarily engaged in the operation of an interstate pipeline.

PAUL F. SCHLICHER,

Sworn to and Subscribed before me the 29th day of January, 1959.

[Seal]

Thomas J. Bertke, Notary Public. My Commission Expires August 31, 1960.

{fol. 238} Acknowledgment of Service (omitted in printing).

{fol. 239}

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Civil Action No. 671

1958

CITIES SERVICE GAS COMPANY, a corporation, Plaintiff,

v.

THE TEXAS COMPANY, a corporation, Defendant.

DEFENDANT'S ANSWERS TO PLAINTIFF'S REQUESTS FOR
ADMISSIONS SERVED JANUARY 19, 1959—Filed March 4, 1959

Defendant hereby answers, from the information presently available to it, the following numbered paragraphs of plaintiff's requests for admissions served herein on January 19, 1959:

1. (a) Admitted.

(b) Admitted that defendant placed its endorsement on the reverse side of the check referred to, but denied that it placed it on the voucher.

(c) Admitted that defendant received the proceeds and benefits of the check referred to, but denied that defendant retained all of those proceeds and benefits.

(d) Admitted.

(e) Admitted.

(f) Admitted.

(g) Denied. Defendant was entitled to more than the full amount of that check in payment for the gas it delivered, and defendant did not assent to the conditions referred to in paragraph 1(g) of plaintiff's requests for admissions in endorsing and cashing that check.

[fol. 240] (h) Denied, but admitted that voucher checks similar in purport to the voucher check referred to in paragraph 1(a) of plaintiff's requests for admissions were issued by plaintiff and that the checks themselves were endorsed and cashed by defendant, with reference to gas delivered by defendant and received by plaintiff during the period January 23, 1954, to November 22, 1957.

(i) Admitted that gas statements accompanied each voucher check, but denied that there were not, from time to time, some differences in those statements.

(j) Denied. The change in price occurred because of things other than or in addition to the Kansas 11 cent Price Order.

(k) Admitted, subject to the matters stated in the foregoing answers to plaintiff's requests for admissions.

(l) Denied. See letters of defendant to plaintiff dated November 23, 1954, May 17, 1955, and May 6, 1958.

(m) Admitted.

(n) Denied. See answer to paragraph 1(l) of plaintiff's requests for admissions.

2. (a) Denied, but admitted that defendant's Federal Power Commission Rate Schedules 68 and 69, Docket No. G-4824, have now been rejected by the Federal Power Commission.

(b) Denied, but admitted that the Federal Power Commission has not accepted rate filings by defendant in place of such rejected Rate Schedules 68 and 69.

(c) Admitted.

(d) Admitted.

3. Denied, but admitted that a true, complete and accurate copy of Sections 55-708, 709, and 710, General Statutes of Kansas, 1949, is attached to plaintiff's amended complaint and marked Exhibit "B".

[fol. 241] 4. (a) Denied, but admitted that the statement quoted in paragraph 4(a) of plaintiff's requests for admissions appeared upon each such voucher received by defendant during the period January 1, 1954, to November 22, 1957, and that defendant endorsed and cashed each check attached thereto.

(b) Admitted.

5. (a) Admitted that a price of 11 cents per M.c.f. for gas measured at 14.65 p.s.i.a., deviated, was a price ordered by the Kansas State Corporation Commission by its 11 cent Price Order, but denied that the price of 11 cents per M.c.f. for gas measured at 14.65 p.s.i.a., deviated, received by defendant during the period covered by the complaint was solely attributable to the 11 cent Price Order of the Kansas State Corporation Commission.

(b) Denied. The gas price of 11 cents per M.c.f. measured at 14.65 p.s.i.a. received by defendant during the period covered by the complaint was a price for gas provided for by the terms, relating to weighted average prices and applicable regulatory orders, included in or incorporated in contracts negotiated between plaintiff and defendant. See, also, the letters of plaintiff to defendant dated July 17, 1953, and August 25, 1953.

(c) Defendant does not presently have sufficient knowledge or information concerning contracts negotiated between plaintiff and others to enable defendant to admit or deny paragraph 5(c) of plaintiff's requests for admissions.

6. (a) Admitted.

(b) Denied, but admitted that the respective volumes of gas listed in paragraph 6(b) of plaintiff's requests for admissions, priced at the rate per M.c.f. as set out opposite [fol. 242] each such volume in that paragraph, would have a value in money equal to that set out opposite each such rate in that paragraph, except that the amount set out in the tenth line of the third column of that paragraph should be \$429,290.98 instead of \$429,281.97, and the amount set out in the twelfth line of that column should be \$1,783.97 instead of \$1,783.79.

(c) Defendant does not presently have knowledge or information sufficient to enable it to admit or deny the heating value of the gas referred to in paragraph 6(c) of plaintiff's requests for admissions.

(d) Defendant does not presently have knowledge or information sufficient to enable it to admit or deny the station numbers referred to in paragraph 6(d) of plaintiff's requests for admissions, but admitted that all the wells there referred to are located in what is commonly called "Pleasant Valley Block."

(e) Defendant cannot admit or deny paragraph 6(e) of plaintiff's requests for admissions inasmuch as defendant cannot know for what purposes plaintiff may regard the heating value of the gas produced from those wells as having some bearing and inasmuch as defendant cannot in any event admit or deny a matter if the admission or denial might be contrary to fact.

7. (a) Admitted.

(b) Admitted.

(c) Admitted.

(d) Admitted.

(e) Defendant cannot admit or deny paragraph 7(e) of plaintiff's requests for admissions inasmuch as defendant cannot understand the fact to which plaintiff there refers. In any event, the proceeds accruing, to which plaintiff appears to refer, would not have accrued solely pursuant to

[fol. 243] the letters referred to in paragraphs 7(a), (c), and (d) of plaintiff's requests for admissions.

8. (a) Admitted.

(b) Admitted, except denied that the letter written by Paul F. Schlicher of defendant and referred to in paragraph 8(b) of plaintiff's requests for admissions contained the stamp, noting receipt by the Federal Power Commission, which is included in the upper right hand corner of Exhibit "1" of plaintiff's requests for admissions.

(c) Admitted.

(d) [Designated as an additional "(c)" in plaintiff's requests for admissions]. Admitted.

(e) Admitted that until after July 29, 1957, defendant did not file with the Federal Power Commission, in its FPC Rate Schedule No. 100, a copy of the Kansas State Corporation Commission's 11 cent Price Order itself, but denied that defendant had not previously filed a schedule showing a price and terms equivalent to that specified in the Kansas State Corporation Commission's 11 cent Price Order and referring to that Price Order.

(f) Admitted.

9. Admitted.

10. Admitted.

Although defendant has answered all of plaintiff's requests for admissions served herein on January 19, 1959, defendant considers many of those requests improper and objectionable because, among other things, they ask or seek claims or contentions of defendant or conclusions of law. Consequently, defendant's answers to such requests consist [fol. 244] of defendant's claims or contentions or its view of questions of law. Moreover, by answering those requests, defendant does not concede the competency, materiality, or relevancy of them or the answers thereto, and does not waive its right to object to or resist any further proceedings thereon or further discovery relating thereto.

The Texas Company, By: Paul F. Schlicher, per J. M. T., Jr.

[fol. 245] State of Delaware,
County of New Castle, ss.:

Paul F. Schlicher being duly sworn, deposes and says that he is attorney and agent of The Texas Company, the defendant herein; that he has read the foregoing answers to plaintiff's requests for admissions; and that the same are true to the best of his knowledge, information, and belief.

PAUL F. SCHLICHER

Sworn to and Subscribed before me, the undersigned, a Notary Public for the state and county aforesaid, this 4th day of March, 1959.

Gertrude T. Parkinson, Notary Public.

[Seal]

[fol. 246] [File endorsement omitted]

Acknowledgment of Service (omitted in printing).

[fol. 247]

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Civil Action No. 671

1958

CITIES SERVICE GAS COMPANY, a corporation, Plaintiff,

vs.

THE TEXAS COMPANY, a corporation, Defendant.

PLAINTIFF'S AFFIDAVIT IN OPPOSITION TO DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT AND IN SUPPORT OF PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT—Filed April 13, 1959

State of Delaware,
County of New Castle, ss.:

Howard L. Williams, of lawful age, being first duly sworn,
upon his oath deposes and says:

That he is one of the attorneys of record for plaintiff
in the above styled and numbered cause; that on or about
April 1, 1959, there was furnished to him, as such attorney
of record, by the attorneys of record for defendant, the
attached instruments marked Exhibits Williams-1 and 2;
that such instruments were furnished to affiant pursuant
to his request therefor and as true and correct copies of
the instruments referred to in paragraph 22 B. of "Defen-
dant's Answers to Plaintiff's Interrogatories served Janu-
ary 12, 1959."

Further Affiant Saith Not.

HOWARD L. WILLIAMS

Subscribed and sworn to before me this 13th day of April,
1959.

Doris D. Burdett, Notary Public.

My Commission Expires: Nov. 12, 1960.

[fol. 248]

EXHIBIT WILLIAMS-1 TO AFFIDAVIT

TO ALL KANSAS ROYALTY OWNERS

Effective January 1, 1954, the Kansas Corporation Commission has prescribed for all gas produced from the Kansas portion of the Hugoton Field a minimum wellhead price of 11¢ per M.C.F., measured on a pressure base of 14.65 pounds. A previous Order of the Commission effective July 1, 1953, prescribed a standard pressure base of 14.65 pounds and that measurement volumes should be corrected for temperature and compressibility.

The validity of these Orders is being contested in the courts, but pending final determination of their validity, our payments to royalty holders will be made in accordance with the Orders.

If it is finally determined that we have overpaid you, you agree upon such determination to refund us such overpayments and you further agree that we may withhold subsequent royalty payments until the overpayments have been recovered. Your acceptance of our checks will constitute such agreements.

THE TEXAS COMPANY

March 22, 1954

[fol. 249] To All Kansas Working Interest Owners and Royalty Interest Owners:

The United States Supreme Court, on April 11, 1955, in *Natural Gas Pipe Line Company of America v. Panoma Corp. et al.*, No. 191, and in *Natural Gas Pipe Line Company of America v. Corporation Commission of the State of Oklahoma et al.*, No. 321, 99 L. ed. 472, held the Oklahoma minimum wellhead price orders inapplicable to a sale and transportation of gas for resale in interstate commerce, after its production and gathering had ended.

Because of that decision there is considerable uncertainty regarding the validity and effect, as applied to sales of gas which is ultimately transported for resale in interstate

commerce, of the order of the Kansas Corporation Commission, effective January 1, 1954, which prescribed for all gas produced from the Kansas portion of the Hugoton Field a minimum wellhead price of 11¢ per M.C.F. measured on a pressure base of 14.65 pounds.

In view of such uncertainty, purchasers from us of gas produced from the Kansas portion of the Hugoton Field are making payment to us on the basis of the minimum wellhead price fixed by the Kansas Corporation Commission without prejudice to future adjustment should it later be determined that such price is improper.

So long, therefore, as we continue to be paid on the basis of such minimum wellhead price, our payments to working interest owners and royalty interest owners will be made on the same basis. If it is finally determined, however, that we have overpaid you, you agree upon such determination to refund us such overpayments and you further agree that we may withhold subsequent payments until the overpayments have been recovered. Your acceptance of our checks will constitute such agreements.

THE TEXAS COMPANY

July 20, 1955

[fol. 250]

EXHIBIT WILLIAMS-2 TO AFFIDAVIT

To all Owners of Working Interests and Royalty Interests in Proceeds of Gas Produced in the Kansas-Hugoton Field:

The United States Supreme Court on January 20, 1958, in *Cities Service Gas Co. v. State Corporation Commission of Kansas*, No. 85, 2 L. Ed. 2d 355, reversed the prior decision of the Kansas Supreme Court in the same case, and thus appears to have held, in effect, that the order of the State Corporation Commission of the State of Kansas, effective January 1, 1954, which prescribed for all gas produced from the Kansas portion of the Hugoton Field a minimum wellhead price of 11¢ per M.C.F. measured on a pressure base of 14.65 pounds, is invalid as applied to sales subject to the jurisdiction of the Federal Power Commission.

Because of that decision, and the fact that some of our basic contracts call for rates lower than those specified by the Kansas minimum price order, there is considerable uncertainty concerning the legality of the 11¢ price we have been receiving from purchasers of our interstate gas since January 1, 1954, and the price we can collect hereafter. One purchaser has already demanded a refund, with interest at 6%, for the difference between the minimum wellhead price and the basic contract price.

If it is determined that we have been collecting more than the amount to which we are legally entitled we possibly will be required to refund, at 6% interest, all "overpayments" made by the companies purchasing our gas since January 1, 1954. In this event, you will have been overpaid and we will, of course, expect like reimbursement from you.

As yet we do not know the attitude of all of the purchasers of our gas in this field as to future payments. One purchaser, Cities Service Gas Company, has tendered payment for gas purchased since November 23, 1957, on the basis that the basic contracts in effect in May, 1954, call for lower prices than the minimum wellhead price prescribed by the order above referred to. Until uncertainty of the

proper price is resolved, we will make payments to you and other working interest owners and royalty interest owners, on account of gas produced and sold in the Hugoton Field of Kansas, on the basis of the prices called for in our basic gas sales contracts with the respective purchasers of interstate gas in the Field. If it is subsequently determined that the purchasers must pay The Texas Company a rate established on the basis of the Kansas minimum well head price, we will promptly account to you for any difference you may be due.

[fol. 251] Past payments affected by minimum price orders were made to you on the condition that our payment and your acceptance thereof would not prejudice the rights of either of us with respect to such payments. The enclosed payments and all future payments shall also be without prejudice to the rights of either of us with respect thereto.

THE TEXAS COMPANY

March 25, 1958

[fol. 251a] [File endorsement omitted]

Acknowledgment of service (omitted in printing).

[fol. 252]

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Civil Action No. 671 1958

CITIES SERVICE GAS COMPANY, a Corporation, Plaintiff,

v.

THE TEXAS COMPANY, a Corporation, Defendant.

SUPPLEMENTAL ANSWERS OF PLAINTIFF, CITIES SERVICE GAS
COMPANY TO DEFENDANT'S REQUEST FOR ADMISSIONS BY
PLAINTIFF—Filed April 17, 1959State of Oklahoma,
County of Oklahoma, ss.:Russel W. Hofsess, of lawful age, being first duly sworn,
upon his oath says:

He is Vice President of Cities Service Gas Company, plaintiff in the above-styled action; that he makes the following answers for and in behalf of plaintiff to Interrogatories served upon plaintiff January 27, 1959, wherein defendant asks that plaintiff "state the facts upon which plaintiff bases its denial of the following paragraphs of defendant's requests for admissions filed herein on November 24, 1958: 4 (a), 4 (b), 5 (b), 5 (c), 5 (e), 5 (f), 6 (a), 6 (b), 6 (c), 6 (d), 8, 10 (a), 10 (b), 11, 13 (a), 13 (b), 13 (c), 14 (a), 14 (b), 14 (c), 14 (d), 14 (e), 15 (a), 15 (b), 15 (c), 16 (a), 16 (b), 16 (c), 16 (d), 17 (a), 17 (b), 17 (c), 18 (a), 18 (b), 18 (c), 18 (d), 19 (a), 19 (b), 20 (a), 20 (b), 20 (c) and 20 (d).

Answer to Interrogatory 4 (a)

Plaintiff denied defendant's request for admission of paragraph 4 (a) because other cases, in effect, have held the Kansas 11¢ Price Order (paragraph 4 of Complaint) invalid and ineffective, such as Natural Gas Pipeline Com-

pany of America v. Panoma Corporation et al., 349 U.S. 44, 99 L.Ed. 866, where the United States Supreme Court held an essentially identical Oklahoma gas price order invalid from its inception. In that case the Court held:

[fol. 253] "In these cases Oklahoma has attempted to fix a minimum price to be paid for natural gas, after its production and gathering has ended, by a company which transports the gas for resale in interstate commerce. We held in Phillips Petroleum Co. v. Wisconsin, 347 U.S. 672, 98 L. ed. 1035, 75 S.Ct. 794, that such sale and transportation cannot be regulated by a state but are subject to the exclusive regulation of the Federal Power Commission. The Phillips case, therefore, controls this one."

The Panoma case was the authority upon which the Kansas 11c Price Order was held invalid. Also, see Natural Gas Pipeline Company of America v. Harrington, 246 F. 2d 915 (5th Cir. 1957).

Answer to Interrogatory 4 (b)

Plaintiff supplements its denial of defendant's request for admission of paragraph 4 (b) by saying, that although to plaintiff's knowledge the Kansas Corporation Commission has not itself formally "modified, reversed, set aside or rescinded the order referred to in paragraph 4 of the complaint," nevertheless, the Federal and Kansas courts have done so for the Kansas Commission—as illustrated by: (a) the decision of the United States Supreme Court in Cities Service Gas Company v. State Corporation Commission, 355 U.S. 381, 2 L.Ed. 2d 355, where the decision of the Kansas Supreme Court (304 P. 2d 528) affirming that order was reversed; and (b) the judgment of the Finney County, Kansas District Court (in which the judicial review proceeding testing the validity of such order was commenced) where the Court found:

"The Court further finds that the State Corporation Commission of the State of Kansas was without jurisdiction to enter its order in its Docket No. 44,079-C (C-3216) Conservation Division, dated December 2,

1953, same being the subject of review in this proceeding, and that said Order of said State Corporation Commission should be by this Court set aside; and that the costs of this proceeding shall be taxed against the State Corporation Commission, defendant here."

and ordered and adjudged:

"2. That the Order of the State Corporation Commission of the State of Kansas, entered December 2, 1953, in its Docket No. 44,079-C (C-3216), Conservation Division, be and the same is hereby set aside."

Answer to Interrogatory 5 (b)

Plaintiff's supplemental answer to Interrogatory 4 (b) applies equally to defendant's Interrogatory 5 (b).

Answer to Interrogatory 5 (c)

Plaintiff admits that to its knowledge the February 18, 1949 Order of the Kansas Corporation Commission has not been judicially determined to be invalid or ineffective [fol. 254] in an action where such Order was the subject of the litigation; however such Order has been, in effect, determined to be invalid and ineffective in such cases as *Cities Service Gas Co. v. State Corporation Commission*, 355 U.S. 381, 2 L.Ed. 2d 355, and *Natural Gas Pipeline Company of America v. Panoma et al.*, 349 U.S. 44, 99 L.Ed. 866.

Answer to Interrogatory 5 (e)

The Kansas Corporation Commission by its Order dated December 2, 1953 (Docket No. 44,079-C (C-3216)) did prior to January 1, 1954 modify, reverse, set aside, or rescind the Order of the Kansas Corporation Commission dated February 21, 1951, referred to in paragraph 5 (d) of defendant's requests for admissions; also, the effect of the decision of the United States Supreme Court in *Cities Service Gas Company v. State Corporation Commission*, 355 U.S. 381, 2 L.Ed. 2d 355, was to "reverse, set aside or rescind" such Order if it be contended such Order affected the price of gas hereunder.

Answer to Interrogatory 5 (f)

Plaintiff admits that to its knowledge the February 21, 1951 Order of the Kansas Corporation Commission has not been judicially determined to be invalid or ineffective in an action where such Order was the subject of the litigation; however such Order has been, in effect, determined to be invalid and ineffective in such cases as *Cities Service Gas Co. v. State Corporation Commission*, 355 U.S. 381, 2 L.Ed. 2d 355, and *Natural Gas Pipeline Company of America v. Panoma et al.*, 349 U.S. 44, 99 L.Ed. 866.

Answer to Interrogatory 6 (a)

Plaintiff denied defendant's request because the writing attached as Exhibit "F" to defendant's answer was not "a complete and accurate copy" of Kansas Corporation Commission's Order dated May 20, 1953, Docket No. 34,780-C (C-1825) (Measurement Order) because there was not included in and as a part of such Exhibit "F" that Commission's "Memorandum Opinion", dated May 20, 1953, which, pursuant to that Order, is made a part thereof by reference. A complete and accurate copy of such Memorandum Opinion forms a part of Exhibit "K" to plaintiff's requests for admissions by defendant.

Answer to Interrogatory 6 (b)

The Kansas Corporation Commission (Measurement) Order dated May 20, 1953, effective July 1, 1953, fixed the standard of measurement for gas, but did not affect the contract price for gas under the June 16, 1949 Contract. [fol. 255] As defendant is aware, the Kansas Corporation Commission has not applied such Order so as to affect the contractual relations of the parties under the June 16, 1949 Contract.

Answer to Interrogatory 6 (c).

Plaintiff admits that to its knowledge the Kansas Measurement Order referred to in 6 (a) has not been judicially determined to be invalid or ineffective in an action where such Order was the subject of the litigation; however, if it

be contended such Order affects the price of gas hereunder, then plaintiff says such Order has been, in effect, determined to be invalid and ineffective in such cases as *Cities Service Gas Company v. State Corporation Commission*, 355 U.S. 381, 2 L.Ed. 2d 355, and *Natural Gas Pipeline Company of America v. Panoma et al.*, 349 U.S. 44, 99 L.Ed. 866.

Answer to Interrogatory 6 (d)

Plaintiff supplements its denial to defendant's request for admission of paragraph 6 (d) by saying, that although to plaintiff's knowledge the Kansas Corporation Commission has not itself formally "modified, reversed, set aside or rescinded" such Measurement Order, nevertheless the United States Supreme Court in *Cities Service Gas Company v. State Corporation Commission*, supra, has in effect "modified, reversed, set aside or rescinded" such Order for the Kansas Corporation Commission, if it be contended that such Order affects the price of gas hereunder.

Answer to Interrogatory 8,

Plaintiff supplements its denial of paragraph 8 by admitting that to plaintiff's knowledge Federal Power Commission did not, prior to the issuance on July 16, 1954 of its Order 174, exercise authority or jurisdiction under the Natural Gas Act of defendant's gas sales to plaintiff; but plaintiff does not admit Federal Power Commission was without such authority or jurisdiction over such sales prior to July 16, 1954, for at all times on and after June 16, 1949, the date of the gas sales contract here involved, Federal Power Commission possessed and had the same and identical authority and jurisdiction under the Natural Gas Act over defendant's sales to plaintiff as Federal Power Commission possessed and had on July 16, 1954, when it issued Order 174.

Answer to Interrogatory 10 (a)

Plaintiff supplements its denial of 10 (a) by saying that all of the sales of gas here involved were made "in interstate commerce" for resale within the meaning of the Natural Gas Act.

[fol. 256] Answer to Interrogatory 10 (b)

Plaintiff supplements its denial of 10 (b) by saying first, plaintiff admits the gas sales referred to in 10 (a) were made by defendant to plaintiff during the period January 1, 1954 through November 22, 1957, and second, plaintiff denies defendant was prior to June 7, 1954 an "independent producer" under Federal Power Commission Order 174-A and Section 154.91 of its Regulations.

Answer to Interrogatory 11

Plaintiff supplements its denial of defendant's request for admission of paragraph 11 by saying that plaintiff, on and immediately prior to June 7, 1954, paid defendant for gas referred to in the Complaint "an amount equal to 11¢ per M.c.f. at 14.65 p.s.i.a., deviated" on the conditions set out in the letter from plaintiff to defendant dated January 21, 1954, the statement on each voucher check issued by plaintiff to defendant in payment for such gas, and defendant's acceptance and retention of the proceeds of each such check. Defendant has filed such letter with Federal Power Commission as a part of its filings with that Commission.

Answer to Interrogatory 13 (a)

Admitted.

Answer to Interrogatory 13 (b)

Plaintiff supplements its answer to 13 (b) by saying plaintiff was then and is now without personal knowledge that the certificate of public convenience ~~and necessity~~ referred to "has not heretofore been withdrawn, revoked, or rescinded or determined to be invalid or ineffective." However, upon the basis that defendant represents and certifies to this Court and to plaintiff that such certificate has ~~not~~ by Federal Power Commission or a Court "heretofore been withdrawn, revoked or rescinded or determined to be invalid or ineffective", plaintiff admits such request.

Answer to Interrogatory 13 (c)

Plaintiff supplements its answer to 13 (c) by saying plaintiff was then and is now without personal knowledge "that defendant accepted the certificate of public convenience and necessity referred to in paragraph 13 (a) hereof on the conditions referred to in that certificate," especially when defendant under its verified application to Federal Power Commission for such certificate stated, among other things:

"This application is made under protest and to avoid the penalties provided in Section 21 of the Natural Gas Act. It is also made subject to Applicant's Application for Rehearing in respect to Order 174-A, filed August [fol. 257] 25, 1954, Federal Power Commission Docket R-138, any and all resulting decisions, determinations, proceedings, orders, rules or regulations, and any judicial appeals therefrom or reviews thereof. By filing this application, Applicant does not admit that it or the sales of gas embraced by the above-mentioned contract is subject to regulation by the Commission and Applicant hereby expressly reserves not only its legal and equitable rights to contest such regulation but also any and all contractual rights it now has or may in the future have by virtue of the terms and provisions of said contract, whether or not same conflict with or may be contrary to the provisions of any order, rule, regulation, decision or determination that has or may be issued or adopted by the Commission."

Also, plaintiff is unaware of any reservations, mental and otherwise, upon which defendant may have accepted such certificate; however, upon the basis defendant represents and certifies to this Court and to plaintiff that defendant accepted such certificate "on the conditions referred to in that certificate", plaintiff admits plaintiff accepted such certificate "on the conditions referred to in that certificate."

Answer to Interrogatory 14 (a)

Plaintiff supplements its answer to 14 (a) by saying it denies such request, as stated. Plaintiff admits *only* that:

(a) the following documents were filed with Federal Power Commission and (b) such documents relate to the Columbian Contract only insofar as any such documents may pertain to defendant's Federal Power Commission Rate Schedule 100,—namely:

- (1) Documents referred to in paragraph 1 of Defendant's Requests for Admissions;
- (2) Letter from defendant to Federal Power Commission dated September 24, 1954 (R.S. 100) marked Exhibit L (1);
- (3) Exhibit marked L (2) (1 through 4) (R.S. 100);
- (4) Exhibit marked L (3) (1 through 17) (R.S. 100);
- (5) "So-called" Federal Power Commission acceptance letter dated February 7, 1955, to defendant pertaining to defendant's rate schedules 68, 69, and 100 and other rate schedules not involved in this action, marked Exhibit L(4) (1 through 5);
- (6) Letter from defendant to Federal Power Commission dated June 13, 1957, marked Exhibit L (5) (1) and Supplement No. 5 or 3 to R.S. 100, marked Exhibit L (5) (4 through 7);
- (7) Letter from Federal Power Commission to defendant dated July 12, 1957 (R.S. 68, 69 and 100), marked Exhibit L (6);
- (8) Western Union telegram from defendant to Federal Power Commission dated July 16, 1957 (R.S. 68, 69 and 100), marked Exhibit L (7);
- (9) Letter from Federal Power Commission to defendant dated July 19, 1957 (R.S. 68, 69 and 100), marked Exhibit L (8);
- [fol. 258] (10) Letter from defendant to Federal Power Commission dated July 29, 1957 (only Order part, not Memorandum part, of Kansas 116 Order) and Cities' January 21, 1954 letter (R.S. 100)—marked Exhibit L (9);

- (11) "So-called" Federal Power Commission acceptance letter to defendant dated August 29, 1957 (R.S. 100)—marked Exhibit L (10);
- (12) "So-called" Federal Power Commission acceptance letter to defendant dated — (R.S. 100), marked Exhibit L (11).

For purposes of 14 (a) plaintiff denies all such documents insofar as defendant's Federal Power Commission Rate Schedules 68 and 69 are concerned.

Answer to Interrogatory 14 (b)

Plaintiff supplements its denial of 14 (b) by admitting only that such filings were tendered to Federal Power Commission under F.P.C. Order 174-A as shown by defendant's transmittal letter to Federal Power Commission dated September 24, 1954, Exhibit L (1) to Defendant's Requests for Admissions.

Answer to Interrogatory 14 (c)

Plaintiff supplements its denial of 14 (c) by saying all documents referred to in 14 (a) are not in the status of not having "heretofore been withdrawn or rejected or determined to be invalid or ineffective," for, as partially illustrated, the Kansas 11c Price Order was held invalid by the United States Supreme Court in *Cities Service Gas Co. v. State Corporation Commission*, supra; the Federal Power Commission rejected defendant's Federal Power Commission filings relating to defendant's Rate Schedules 68 and 69, and the Kansas Supreme Court held the Kansas Oil and Gas Severance Tax unconstitutional in *State of Kansas v. Kirchner*, 322 P.2d 759.

Answer to Interrogatory 14 (d)

Plaintiff denied and now denies that defendant furnished plaintiff with copies of *all* the writings referred to in paragraph 14 (a); however plaintiff admits defendant furnished the following writings to plaintiff, namely: Exhibits L (2), L (3) and L (4).

Answer to Interrogatory 14 (e)

After filing with Federal Power Commission, the writings referred to in paragraph 14 (a) would have been available to plaintiff during Federal Power Commission's regular office hours, subject to the delay incident to the flood of filings with that Commission under its Orders 174.

Answer to Interrogatory 15 (a)

Plaintiff admits Federal Power Commission granted Cabot Carbon Company a certificate of public convenience and necessity for sales of gas to plaintiff under the Sun-[fol. 259] flower contract referred to in the Complaint. Cabot in its verified application dated November 22, 1954, for such certificate, says:

"Cabot Carbon Company files this application solely on its own behalf and not as a representative of other individuals."

Cabot in its letter to defendant dated December 2, 1957, also says, among other things:

" * * * we have made no attempt to cover your portion of the gas from these units in any of our reports to the Federal Power Commission."

Answer to Interrogatory 15.(b)

Admitted as to Cabot Carbon Company only.

Answer to Interrogatory 15 (c)

Admitted Cabot Carbon Company accepted such certificate of public convenience and necessity on the conditions referred to in such certificate.

Answer to Interrogatory 16 (a)

Plaintiff supplements its denial of 16 (a) by admitting only that such filings were tendered to Federal Power Commission under F.P.C. Order 174-A as shown by Cabot Carbon Company's letter of transmittal to Federal Power Commission dated November 22, 1954, which letter is

marked Exhibit A H (1) and attached to the affidavit of Andrew B. Kirkpatrick, Jr. in behalf of and pertaining to defendant's motion for summary judgment herein.

Answer to Interrogatory 16 (b)

Plaintiff supplements its denial of 16 (b) by saying defendant has neither described with reasonable certainty nor attached to its Request for Admission the documents referred to. On the basis that some of the documents referred to are the same or similar to documents filed with Federal Power Commission by others, defendant says the documents referred to in 16 (a) are not in the status of not having "heretofore been withdrawn, revoked or rescinded, or determined to be invalid or ineffective" for, as partially illustrated, the Kansas 11¢ Price Order was held invalid by the United States Supreme Court in *Cities Service Gas Company v. State Corporation Commission*, supra, and the Kansas Supreme Court held the Kansas Oil and Gas Severance Tax unconstitutional in *State of Kansas v. Kirchner*, 322 P. 2d 759.

Answer to Interrogatory 16 (c)

Plaintiff supplements its denial of 16 (c) by saying: Cabot has not furnished plaintiff with all copies of the writings referred to in 16 (a). Defendant has not described the writings referred to in 16 (a) with any certainty, nor has defendant furnished such writings to plaintiff. Plaintiff is without knowledge of the content of the writings to [fol. 260] which defendant may refer. Plaintiff admits Cabot furnished plaintiff a copy of Cabot's Change in Rate Schedule dated May 16, 1956. A copy of such Change in Rate Schedule, together with a copy of letter of Federal Power Commission to Cabot dated June 14, 1956, rejecting such Change in Rate Schedule, respectively marked Exhibits "A" and "B", is attached hereto and made a part hereof.

Answer to Interrogatory 16 (d)

After filing with Federal Power Commission, the writings referred to in paragraph 16 (d) would have been

available to plaintiff during Federal Power Commission's regular office hours, subject to the delay incident to the flood of filings with that Commission under its Orders 174.

Answer to Interrogatory 17 (a)

Admitted as to Western Natural Gas Company only.

Answer to Interrogatory 17 (b)

Admitted as to Western Natural Gas Company only.

Answer to Interrogatory 17 (c)

Admitted as to Western Natural Gas Company only.

Answer to Interrogatory 18 (a)

Plaintiff supplements its denial of 18 (a) by saying it denies such request as stated, except it admits *only* that Western's filings were tendered to Federal Power Commission under F.P.C. Order 174-A, as shown by Western's transmittal letter to Federal Power Commission dated November 10, 1954, a copy of which is attached to defendant's affidavit in support of its Motion for Summary Judgment and marked Exhibit "U".

Answer to Interrogatory 18 (b)

Plaintiff supplements its denial of 18 (b) by saying defendant has neither described with reasonable certainty nor attached to its Request for Admission the documents referred to. On the basis that some of the documents referred to are the same or similar to documents filed with Federal Power Commission by others, defendant says the documents referred to in 18 (b) are not in the status of not having "heretofore been withdrawn, revoked or rescinded, or determined to be invalid or effective" for, as partially illustrated, the Kansas 11¢ Price Order was held invalid by the United States Supreme Court in *Cities Service Gas Company v. State Corporation Commission*, *supra*, and the Kansas Supreme Court held the Kansas Oil and Gas Severance Tax unconstitutional in *State of Kansas v. Kirchner*, 322 P. 2d 759.

[fol. 261] Answer to Interrogatory 18 (c)

Plaintiff supplements its denial of 18 (c) by saying Western has not furnished plaintiff with all copies of the writings referred to in 18 (a). Defendant has neither described such writings with reasonable certainty nor has defendant attached such writings to its Request for Admissions. Plaintiff is without knowledge of the content of such writings as defendant may refer to. Plaintiff states Western furnished plaintiff with Western's initial Rate Schedule (omitting contracts therein referred to) filed with Federal Power Commission in connection with the Western Contract in accordance with Federal Power Commission's Order No. 174-A.

Answer to Interrogatory 18 (d)

After the filing with Federal Power Commission, the writings referred to in paragraph 18 (d) would have been available to plaintiff during Federal Power Commission's regular office hours, subject to the delay incident to the flood of filings with that Commission under its Orders 174.

Answer to Interrogatory 19 (a)

Plaintiff did not at any time contest, protest or object to the Federal Power Commission certificate of public convenience and necessity and rate filings for the sales of natural gas to plaintiff referred to in the Complaint.

Answer to Interrogatory 19 (b)

Plaintiff did contest, protest, or object to a Federal Power Commission certificate of public convenience and necessity and a rate filing for sales of natural gas from the Kansas-Hugoton Field after June 7, 1954, made to it by an independent producer or producers of natural gas other than defendant.

Answer to Interrogatory 20 (a)

Plaintiff supplements its denial of 20 (a) by saying that whether "plaintiff could have applied for a stay of sus-

pension of" the Kansas 11¢ Price Order during the pendency of the review proceedings pertaining to that Order is a question of law dependent upon an interpretation of the applicable Kansas statute or statutes. Aside from the question or questions of law as to whether plaintiff could have applied for such a stay of suspension, plaintiff admits it did not in such review proceedings apply for such a stay of suspension.

Answer to Interrogatory 20 (b)

Plaintiff supplements its denial of 20 (b) by saying that [fol. 262] it is a question of law whether such "penalties and actions" applied only if the Kansas 11¢ Price Order was valid. Plaintiff, originally and here, denies that, as a matter of law, such "penalties and actions" applied only if such order "was valid."

Answer to Interrogatory 20 (c)

Plaintiff supplements its denial of 20 (c) by saying: first, that at no place in its Complaint does plaintiff ever expressly or impliedly seek to apply the "penalties and actions", referred to in paragraph 4 of its Complaint, to the two Kansas Corporation Commission Orders dated, respectively, February 18, 1949 and February 21, 1951, nor does any allegation in such Complaint relate to such Orders; second, as a matter of law, the Kansas Corporation Commission Orders, dated, respectively, February 18, 1949 and February 21, 1951, have no effect or application to any gas involved in this action; third, if such Orders have any application to the gas involved in this action, then such Orders were invalid and void from their inception for the same reason the Kansas 11¢ Price Order was void ab initio; and, fourth, whether such "penalties and actions" applied to "violations" of such Orders is not only a question of law, but here it is a moot one.

Answer to Interrogatory 20 (d)

See answers to 20 (b) and 20 (c).

This Court will observe plaintiff's supplementations of its denials of defendant's requests for admissions are largely statements of plaintiff's contentions and law conclusions which have been necessitated by defendant's insistence that its improper and objectionable interrogatories be answered. Under the circumstances, although plaintiff believes such interrogatories are incompetent, immaterial and irrelevant, it has attempted to answer such interrogatories; however plaintiff, by its answers, does not concede the competency, materiality or relevancy of either such interrogatories or the answers thereto, nor does plaintiff waive its right to object to further discovery or other proceedings related thereto.

Dated this 11th day of April, 1959.

RUSSEL W. HOFSESS

Subscribed and sworn to before me this 11th day of April, 1959.

GLADYS HEADY, Notary Public

My commission expires March 15, 1960.

[fol. 263]

[File endorsement omitted]

Acknowledgment of service (omitted in printing).

[fol. 264]

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Civil Actions No. 670 and 708—1958

CITIES SERVICE GAS COMPANY, a corporation, Plaintiff

v.

COLUMBIAN FUEL CORPORATION, a corporation, Defendant

Civil Action No. 671—1958

CITIES SERVICE GAS COMPANY, a corporation, Plaintiff

v.

THE TEXAS COMPANY, a corporation, Defendant

**Main Brief of Defendants in Support of Their Motions
for Summary Judgment—Filed May 1, 1959**

STATEMENT OF THE CASES

The Nature of the Proceedings

[fol. 265] Cities avers that what it paid Columbian & Texaco for gas delivered after January 1, 1954, exceeded the price for that gas originally specified in its purchase agreements. It asks that it be refunded the difference between what it paid and the alleged contract price. It seeks this recovery upon common law theories of contract, restitution, and unjust enrichment.

Columbian & Texaco have both moved for summary judgment on the ground that, throughout the period covered by the complaint, the legal price for their sales of gas to Cities was exclusively controlled by state and federal regulations, not by private contract, and Cities does not

base its claims upon those price regulations. This is the brief of Columbian & Texaco in support of those motions.

[fol. 266]

ARGUMENT

II.

After Federal Regulation Under the Natural Gas Act Commenced on July 16, 1954: Rates on File With the Federal Power Commission Controlled the Price for Gas Sold to Cities by Columbian & Texaco.

[fol. 267] Cities in these cases does not, however, base its claims for the period after June 7, or July 16, 1954, on the filed rate applicable to its purchases from Columbian & Texaco. It does not, in its complaints, even refer to the Natural Gas Act, the Federal Power Commission and its regulations, or the rate filings that have been made there- [fol. 268] under.* Rather, it squarely bases its cases solely upon common law principles of contract and that alone. See *Cities Service Gas Company v. Skelly Oil Company*, 165 F. Supp. 31 (Del. 1958). It cannot, we submit, succeed in that.

* If Cities had had a claim on the filed rate, it would have had to assert it in a federal court, for §22 of the Natural Gas Act, 15 U. S. C. §717u, directs that the "District Courts of the United States . . . shall have exclusive jurisdiction of violations of this act or the rules, regulations, and orders thereunder, and of all suits in equity and actions at law, brought to enforce any liability or duty created by, or to enjoin any violation of, this act or any rule, regulation, or order thereunder. . . ." See, e.g., *Standard Power & Light Corp. v. Investment Associates, Inc.*, 29 Del. Ch. 593, 51 A. 2d 572, 579 (Sup. Ct. 1947) (involving the jurisdictional provision of the Securities Exchange Act of 1934 which is in all material respects identical).

[fol. 269]

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Civil Action No. 671—1958

CITIES SERVICE GAS COMPANY, a corporation, Plaintiff,

v.

THE TEXAS COMPANY, a corporation, Defendant.

CERTIFIED COPIES OF OFFICIAL PAPERS—Filed June 24, 1959

In the manner provided by 10 Del. C. § 4308 and by Rule 44 of the Rules of this Court the defendant hereby introduces into the record of this cause the certified copies of papers attached hereto as Exhibits A through D hereof.

Morris, Nichols, Arsht & Tunnell; James M. Tunnell, Jr.; Andrew B. Kirkpatrick, Jr., 3000 DuPont Building, Wilmington, Delaware, Attorneys for Defendants.

Of Counsel: Paul F. Schlicher, 24th Floor Chrysler Building, 135 E. 42nd Street, New York, New York.

[fol. 270] NOTE:

The original certified copies, of which photocopies are attached hereto, are all on file in this Court in Civil Action No. 722, entitled "Cities Service Gas Company v. Pan American Petroleum Corporation."

[fol. 271]

EXHIBIT D(3)

UNITED STATES OF AMERICA

FEDERAL POWER COMMISSION

I, Joseph H. Gutridge, Secretary of the Federal Power Commission, and official custodian of the records of said Commission, do hereby certify that the attached three pages are true and correct copies of pages numbers 52752, 52756 and 52912 (IP Table No. 61, Sheet 8 of Table 1) from the minutes of the Commission meeting of December 29, 1954.

In witness whereof I have hereunto subscribed my name and caused the seal of the Federal Power Commission to be affixed this 12th day of June A.D., 1959, at Washington, D. C.

/s/ J. H. GUTRIDGE
Secretary.

(Seal)
[fol. 272]

52752

MINUTES OF THE THREE THOUSAND EIGHT HUNDRED AND
FORTY-FOURTH MEETING

The Commission convened at 10:00 a.m. on December 29, 1954.

Present: Acting Chairman Draper, Commissioners Smith, Digby and Stueck.

The minutes of the 3836th, 3837th, 3838th, 3839th, 3840th, 3841st and 3843rd meetings of December 14, 15, 16, 17, 20, 21 and 23, respectively, were read and approved. (Acting Chairman Draper, not having participated in the meetings of December 15, 17, 20 and 21, did not vote on the question of approval of the minutes for those dates. Commissioners Smith and Stueck, not having participated in the meeting of December 23, did not vote on the question of approval of the minutes for that date. Commissioner Digby, not having participated in the meeting of December 17, did not vote on the question of approval of the minutes for that date.)

Action was taken, as set forth in the documents appended hereto, in the following matters:

- (1) Docket Nos. G-1142, G-1508, G-2019, G-2074, G-2210, G-2220, and G-2378, United Gas Pipe Line Company.
(Order denying motion of Mississippi River Fuel Corporation to dismiss)
 - (2) Docket Nos. G-1142, G-1508, G-2019, G-2074, G-2210, G-2220 and G-2378, United Gas Pipe Line Company.
(Order directing issuance of subpoena for the production of documentary evidence)
(Commissioner Digby dissenting)
 - (3) Docket No. E-6445, Consolidated Gas Electric Light and Power Company of Baltimore v. Pennsylvania Water & Power Company, Respondent, Public Service Commission of Maryland, Intervenor Docket No. E-6350, Public Service Commission of Maryland v. Pennsylvania Water & Power Company, Susquehanna Transmission Company of Maryland, Safe Harbor Water Power Corporation, Consolidated Gas Electric Light and Power Company of Baltimore, Metropolitan Edison Company, Pennsylvania Power & Light Company, and Philadelphia Electric Company, Respondents
Pennsylvania Public Utility Commission, Intervenor
(Order allowing service agreements to take effect)
 - (4) Docket No. E-6595, Maine Consolidated Power Company
(Order to show cause and fixing date for hearing)
[fol. 273]
- 52756
- (42) Docket No. G-2534, Alabama-Tennessee Natural Gas Company
(Findings and order issuing certificate of public convenience and necessity and approving abandonment of facilities)
 - (43) Docket Nos. G-4612 and G-4613, Southern Union Gas Company Docket No. G-4614, Aztec Oil & Gas Company
(Findings and order issuing certificate of public convenience and necessity and dismissing application)
(Commissioner Digby filed a concurring statement)

- (44) Docket No. G-4667, Anderson Natural Gas Company (Findings and order directing physical connection of facilities and sale of natural gas)
- (45) Docket No. G-4264, Southern Natural Gas Company (Order dismissing motion for rehearing and reconsideration)
- (46) Docket No. G-2404, Kansas-Nebraska Natural Gas Company, Inc. (Order approving proposed settlement and accepting revised tariff)
- (47) Docket No. E-6587, Southern Utah Power Company (Order authorizing issuance of short-term promissory note)

The Commission approved a letter to the Assistant Secretary of the Interior, approving, in response to his letter of December 8, 1954, the extension to July 6, 1955, of the period of delivery of experimental energy by Bonneville Power Administration, Docket No. E-6571, to the City of Springfield, Oregon, for resale to the National Metallurgical Corporation.

The Commission considered the rate filings identified on attached Tables 1, 2, 3 and 4, IP 61, dated December 22, 1954, and voted to accept all of the rate schedules for filing; that notice be waived for all tax increases filed on or before October 1, 1954, to establish the requested effective dates; that for those tax increases filed after October 1, 1954, notice be waived only to the extent necessary to establish the dates of filing or the dates requested, whichever are later, as the effective dates; and directed that the filing companies be advised of this action by appropriate form letters.

The Commission approved a letter to the Phillips Petroleum Company, rejecting, in response to its letters of November 30, 1954, Rate Schedules 241 and 242.

[fol. 273a]

[File endorsement omitted]

Acknowledgment of service. (omitted in printing).

[fol. 274]

SUMMARY OF INDEPENDENT PRODUCER RATE FILINGS
RATES IN EFFECT ON JUNE 7, 1954

TABLE NO 1
SHEET 2 OF 35

RP No 81

FILING COMPANY	DESIGNATION		DESCRIPTION AND DATE OF INSTRUMENT	DATE OF TRANSMITTAL LETTER	FILING DATE	BUYER	PRICE JUNE 7, 1954 (¢ PER BCF)	CORRESPONDENCE CONTROL SERIAL NO.
	RATE SCHEDULE NO.	SUPPLEMENT NO.						
<i>The Texas Co.</i> <i>Box 2832,</i> <i>Houston 4, Texas</i>	86	-	<i>Statement Undated¹</i>	<i>10-12-54</i>	<i>11-12-54</i>	<i>Sun Oil Co.</i> <i>East Field, Lim Hagg Co., Tex.</i>	<i>204533¹²</i>	<i>153896</i>
<i>The Texas Co.</i>	87	-	<i>Statement Undated¹</i>	<i>10-12-54</i>	<i>11-12-54</i>	<i>Sun Oil Co.</i> <i>Blaumberg Field, Starr and Hidalgo Cos., Tex.</i>	<i>204533¹²</i>	<i>153895</i>
<i>The Texas Co.</i>	88	-	<i>Contract 9-19-52</i>	<i>9-24-54</i>	<i>11-12-54</i>	<i>Kansas-Nbraska Nat. Gas Co.</i>	<i>11.0¹²</i>	<i>153927</i>
<i>"</i>	95	1	<i>Bill¹² Apr., 1954</i>	<i>9-24-54</i>	<i>11-12-54</i>	<i>"</i> <i>Hugoton Field, Kearney Co., Kan.</i>		
<i>The Texas Co.</i>	99	-	<i>Contract 8-3-52</i>	<i>9-24-54</i>	<i>11-12-54</i>	<i>Hugoton Plains Gas and Oil Co.</i>	<i>11.0¹²</i>	<i>153926</i>
<i>"</i>	99	1	<i>Bill¹² Apr., 1954</i>	<i>9-24-54</i>	<i>11-12-54</i>	<i>"</i> <i>Hugoton Field, Seward Co., Kan.</i>		
<i>The Texas Co.</i>	100	-	<i>Contract 6-16-49</i>	<i>9-24-54</i>	<i>11-12-54</i>	<i>Citias Service Gas Co.</i>	<i>11.0¹²</i>	<i>153922</i>
<i>"</i>	100	1	<i>Letter 9-8-49</i>	<i>9-24-54</i>	<i>11-12-54</i>	<i>"</i>		
<i>"</i>	100	2	<i>Bill¹² June, 1954</i>	<i>9-24-54</i>	<i>11-12-54</i>	<i>"</i> <i>Hugoton Field, Stevens Co., Kan.</i>		
<i>The Texas Co.</i>	101	-	<i>Contract 4-3-50</i>	<i>10-20-54</i>	<i>11-12-54</i>	<i>United Gas Pipe Line Co.</i>	<i>10.22070¹²</i>	<i>153917</i>
<i>"</i>	101	1	<i>Letter 4-3-50</i>	<i>10-20-54</i>	<i>11-12-54</i>	<i>"</i>		
<i>"</i>	121	2	<i>" 4-3-50</i>	<i>10-20-54</i>	<i>11-12-54</i>	<i>"</i>		
<i>"</i>	121	3	<i>" 2-15-52</i>	<i>10-20-54</i>	<i>11-12-54</i>	<i>Baxterville Field, Lamar and Marion Cos., Miss.</i>		
<i>The Texas Co.</i>	102	-	<i>Contract 6-7-54</i>	<i>10-20-54</i>	<i>11-12-54</i>	<i>United Gas Pipe Line Co.</i>	<i>12.5¹²</i>	<i>153905</i>
<i>"</i>	102	1	<i>Letter 6-7-54</i>	<i>10-20-54</i>	<i>11-12-54</i>	<i>"</i> <i>Duck Lake Field, St. Mary and St. Martin Parishes, La.</i>		

[fol. 275]

EXHIBIT D(4)

UNITED STATES OF AMERICA

FEDERAL POWER COMMISSION

I, Joseph H. Gutride, Secretary of the Federal Power Commission, and official custodian of the records of said Commission, do hereby certify that the attached three pages are true and correct copies of pages numbers 75036, 75041 and 75159 (IP Table No. 1351, Sheet 1 of Table 2) from the minutes of the Commission's meeting of August 21, 1957.

In witness whereof I have hereunto subscribed my name and caused the seal of the Federal Power Commission to be affixed this 18th day of June A.D., 1959, at Washington, D. C.

/s/ J. H. GUTRIDE

Secretary.

(Seal)

[fol. 276]

75036

MINUTES OF THE FOUR THOUSAND FOUR HUNDRED
THIRTY-SECOND MEETING

The Commission convened at 10:00 a.m. on August 21, 1957.

Present: Chairman Kuykendall, Commissioners Digby, Stueck, Connole and Kline.

The minutes of the 4423rd, 4426th and 4428th meetings of August 7, 13 and 15, respectively, were read and approved. (Chairman Kuykendall, not having been present at the above meetings, did not vote on the question of approval of the minutes. Commissioner Kline, not having been present at the meeting of August 7, did not vote on the question of approval of the minutes for that date. Commissioner Digby, not having been present at the meeting of August 15, did not vote on the question of approval of the minutes for that date.)

Chairman Jerome K. Kuykendall presented his credentials as a member of the Federal Power Commission for the term expiring June 22, 1962, by appointment of the President dated August 16, 1957. The Chairman announced that he took the required oath of office on August 16, 1957, and that copies of his commission and oath of office, in due form, have been filed with the Department of State. He presented also the following ORDER:

Pursuant to the provisions of Section 3 of Reorganization Plan No. 9 of 1950, I hereby designate Jerome K. Kuykendall as Chairman of the Federal Power Commission.

Dwight D. Eisenhower

THE WHITE HOUSE,
August 16, 1957

[fol. 277]

75041

(51) Resolution relating to Mr. Abraham W. Boynton

The Commission considered the rate filings identified on the attached Table, IP 1344, dated August 19, 1957, and decided to suspend the filings of Shell Oil Company, Operator, et al. listed on Lines 1-2, The Atlantic Refining Company listed on Lines 3-4, Oil Participations, Inc. listed on Line 5, Southeastern Gas Company listed on Lines 6-7, M. B. Chastain, et al. listed on Line 15 and Placid Oil Company, et al. listed on Lines 18-19, each for five months from the expiration of statutory notice, or the requested effective date, whichever is later, excepting the filing listed on Lines 6-7 which is to be suspended until October 1, 1957 (Commissioner Digby dissenting as to the suspension of the filing listed on Line 5) (see suspension orders, items 20 through 25 above). The periodic increases listed on Lines 10, 11, 8, 9, 12, 20, 21, 22 and 23, and the renegotiated increase listed on Lines 16-17 and the increase for operation of compression facilities listed on Lines 13-14 are to become effective 30 days after filing, or the requested effective date, whichever is later. Sinclair Oil & Gas Company (Operator), et al. is to be advised of the acceptance of the filing listed on Lines 13 and 14 by a letter noting that a change in com-

pression charge resulting from a change in hourly labor rates would constitute a change in rate. The filing companies are to be advised of the other acceptances by appropriate form letters.

The Commission considered the rate filings identified on the attached Tables 1, 2, 3, 4 and 5, IP 1351, dated August 19, 1957, and accepted all of them with no effective date specified for the supplements completing June 7, 1954 rate schedules listed on Lines 1-2, 4-5, 7-8, 10-11, 13-14, 16-17, 19-20, 22-23, 30, 33-34, 36-37, 50-51, 53-54 and 56-57 of Table 2. Waiver of notice was granted, where necessary, to permit all rate schedules listed on Table 1, all supplements listed on Table 2 not mentioned above, and all supplements listed on Table 3, to become effective on the date shown in the "Effective Date" column of the respective tables. All rate schedules listed on Table 4 are to be redesignated as shown and waiver of notice was granted to permit all notices of succession with the respective assignments on said table to become effective on the date shown in the "Effective Date" column. All rate schedules listed on Table 5 are to be redesignated as shown and waiver of notice was granted to permit all contracts and respective supplements listed on said table to become effective on the date shown in the "Effective Date" column. The filing companies are to be advised of this action by appropriate letters.

Thereupon, the Commission adjourned.

JEROME K. KUYKENDALL
Chairman

Attest:

MICHAEL J. FARRELL
Acting Secretary

AUG 19 1961

I. P. No. 135

LINE NO.	FILING COMPANY AND MAILING ADDRESS	DESIGNATION		DESCRIPTION AND DATE OF INSTRUMENT	DATED		BUYER AND PRODUCING AREA	LAST PRICE PREVIOUSLY REPORTED \$ PER MCF	INCREASE (DECREASE) \$ PER MCF	PRICE AFTER INCREASE OR DECREASE \$ PER MCF	PROD. BASE CODE	ANNUAL AMOUNT OF INCREASE (DECREASE)
		INSTR. NO.	SERIAL NO.		TRANSMITTAL LETTER	FILING						
1	THE TEXAS COMPANY	72	2	ORDER ✓ 12-2-53	7-24-57	7-31-57	Northern Natural Gas Co.	11.0 ✓	NOT APPLICABLE	100		NONE
2	P.O. BOX 2332	72	4	LETTER ✓ 2-23-54	7-24-57	7-31-57	(Hugoton Fld, Haskell Co. Kan.)		NOT APPLICABLE	100		NONE
3	HOUSTON 1, TEXAS	72	5	NOTICE OF CHANGE-UNDATED	6-13-57	6-31-57			.055 ✓	11.055	100	32.
4	THE TEXAS COMPANY	98	2	ORDER ✓ 12-2-53	7-24-57	7-31-57	Kansas-Nebraska Natural Gas Co. Inc.	11.0 ✓	NOT APPLICABLE	100		NONE
5		98	3	LETTER ✓ 2-18-54	7-24-57	7-31-57	(Hugoton Fld, Kearney Co. Kan.)		NOT APPLICABLE	100		NONE
6		98	4	NOTICE OF CHANGE-UNDATED	6-13-57	6-31-57			.055 ✓	11.055	100	132.
7	THE TEXAS COMPANY	99	2	ORDER ✓ 12-2-53	7-24-57	7-31-57	Hugoton Plains Gas & Oil Co.	11.0 ✓	NOT APPLICABLE	100		NONE
8		99	3	LETTER ✓ 4-1-54	7-24-57	7-31-57	(Hugoton Fld, Seward Co. Kan.)		NOT APPLICABLE	100		NONE
9		99	4	NOTICE OF CHANGE-UNDATED	6-13-57	6-31-57			.073 ✓	11.073	100	31.
10	THE TEXAS COMPANY	100	3	ORDER ✓ 12-2-53	7-24-57	7-31-57	Cities Service Gas Co.	11.0 ✓	NOT APPLICABLE	100		NONE
11		100	4	LETTER ✓ 1-21-54	7-24-57	7-31-57	(Hugoton Fld, Stevens Co. Kan.)		NOT APPLICABLE	100		NONE
12		100	5	NOTICE OF CHANGE-UNDATED	6-13-57	6-31-57			.055 ✓	11.055	100	1402.
13	THE TEXAS COMPANY	106	4	ORDER ✓ 12-2-53	7-24-57	7-31-57	Northern Natural Gas Co.	11.0 ✓	NOT APPLICABLE	100		NONE
14		106	5	LETTER ✓ 2-23-54	7-24-57	7-31-57	(Hugoton Fld, Morton Co. Kan.)		NOT APPLICABLE	100		NONE
15		106	6	NOTICE OF CHANGE-UNDATED	6-13-57	6-31-57			.055 ✓	11.055	100	6.
16	THE TEXAS COMPANY	107	4	ORDER ✓ 12-2-53	7-24-57	7-31-57	Northern Natural Gas Co.	11.0 ✓	NOT APPLICABLE	100		NONE
17		107	5	LETTER ✓ 2-23-54	7-24-57	7-31-57	(Hugoton Fld, Seward Co. Kan.)		NOT APPLICABLE	100		NONE
18		107	6	NOTICE OF CHANGE-UNDATED	6-13-57	6-31-57			.055 ✓	11.055	100	6.
19	THE TEXAS COMPANY	108	4	ORDER ✓ 12-2-53	7-24-57	7-31-57	Northern Natural Gas Co.	11.0 ✓	NOT APPLICABLE	100		NONE
20		108	5	LETTER ✓ 2-23-54	7-24-57	7-31-57	(Hugoton Fld, Morton Co. Kan.)		NOT APPLICABLE	100		NONE
21		108	6	NOTICE OF CHANGE-UNDATED	6-13-57	6-31-57			.055 ✓	11.055	100	8.
22	THE TEXAS COMPANY	109	4	ORDER ✓ 12-2-53	7-24-57	7-31-57	Northern Natural Gas Co.	11.0 ✓	NOT APPLICABLE	100		NONE
23		109	5	LETTER ✓ 2-23-54	7-24-57	7-31-57	(Hugoton Fld, Morton Co. Kan.)		NOT APPLICABLE	100		NONE
24		109	6	NOTICE OF CHANGE-UNDATED	6-13-57	6-31-57			.055 ✓	11.055	100	7.

ION.

AUG 19 1957

I. P. No. 1351

Table 2
Sheet 1 of 4

PRICE ONLY ITEM REF	INCREASE (DECREASE) ¢ PER REF	PRICE AFTER INCREASE OR DECREASE ¢ PER REF	PRE- DISE BASE CODE	ANNUAL AMOUNT OF INCREASE (DECREASE)	PROPOSED EFFECTIVE DATE	EFFECTIVE DATE (INCREASE) (OTHERWISE) (ORDERED)	CORRESPONDENCE CONTROL SERIAL NO. INITIALS
0 2/	NOT APPLICABLE		100	NONE	6/	2/	
	NOT APPLICABLE		100	NONE	6/	2/	6835
	.055 2/	11.055	100	32.	7-1-57	7-1-57	7649
							JAN
2 2/	NOT APPLICABLE		100	NONE	6/	2/	
	NOT APPLICABLE		100	NONE	6/	2/	6846
	.055 2/	11.055	100	132.	7-1-57	7-1-57	7642
							JAN
0 2/	NOT APPLICABLE		100	NONE	6/	2/	
	NOT APPLICABLE		100	NONE	6/	2/	6833
	.073 2/	11.073	100	31.	7-1-57	7-1-57	7640
							JAN
0 2/	NOT APPLICABLE		100	NONE	6/	2/	
	NOT APPLICABLE		100	NONE	6/	2/	6829
	.055 2/	11.055	100	1402.	7-1-57	7-1-57	7639
							JAN
0 2/	NOT APPLICABLE		100	NONE	6/	2/	
	NOT APPLICABLE		100	NONE	6/	2/	6840
	.055 2/	11.055	100	6.	7-1-57	7-1-57	7648
							JAN
0 2/	NOT APPLICABLE		100	NONE	6/	2/	
	NOT APPLICABLE		100	NONE	6/	2/	6841
	.055 2/	11.055	100	6.	7-1-57	7-1-57	7647
							JAN
2 2/	NOT APPLICABLE		100	NONE	6/	2/	
	NOT APPLICABLE		100	NONE	6/	2/	6842
	.055 2/	11.055	100	8.	7-1-57	7-1-57	7646
							JAN
2 2/	NOT APPLICABLE		100	NONE	6/	2/	
	NOT APPLICABLE		100	NONE	6/	2/	6843
	.055 2/	11.055	100	7.	7-1-57	7-1-57	7645
							JAN

[fol. 279]

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Civil Actions No. 670 and 708—1958

CITIES SERVICE GAS COMPANY, a corporation, Plaintiff,

v.

COLUMBIAN FUEL CORPORATION, a corporation, Defendant.

Civil Action No. 671—1958

CITIES SERVICE GAS COMPANY, a corporation, Plaintiff,

v.

THE TEXAS COMPANY, a corporation, Defendant.

Defendants' Reply to Plaintiff's Supplemental
Memorandum—Filed July 24, 1959

[fol. 280]

I

Cities Has Not Cited a Single Precedent for Its Argument That a State Court Has Jurisdiction of a Filed Rate Claim Under the Natural Gas Act.

[fol. 281] Cities' complaints in our cases are confined to assertions of common law claims. And if Cities still rests its case upon those claims, rather than upon filed rate claims, we certainly agree that jurisdiction is in this court and not a federal court. But in that event defendant would have summary judgment, for no claim resulting from these transactions is maintainable unless it is shown to have the imprimatur of the Federal Power Commission. Cf. *Montana-Dakota*, 341 U.S. at p. 249.

[fol. 282] We certainly don't disagree. If Cities here relies upon common law contract, there is, as we have just [fol. 283] said, no jurisdiction of its claim in a federal court.

.

[fol. 284] Again, we do not disagree. Certainly federal issues may arise and be properly decided in state court proceedings. When the plaintiff elects not to rely upon the federal law, and it is injected defensively, then the state courts alone will have jurisdiction. Moreover, even where the plaintiff relies upon the federal law, the state courts will have concurrent jurisdiction if the federal law has not provided that its jurisdiction shall be exclusive.

Winsor v. United Air Lines, 159 F.Supp. 856 (Del. 1958) (See CSB 12). As to *Winsor*, Cities says that Judge [fol. 285] Layton there found "that it would be necessary during the course of the trial to construe the Warsaw Convention but denied that such necessity created Federal jurisdiction."

We agree. At page 858 of his opinion Judge Layton there ruled that, since the Treaty was a matter of defense, plaintiff "did not have to plead . . . the Treaty in order to state a good cause of action." The case was therefore not removable. As we have said, we agree that if Cities here does not rely upon federal law, then this court has jurisdiction of the plaintiff's case, although fatally defective, and the federal courts do not.

.

[fol. 286]

IN THE SUPERIOR COURT IN AND FOR NEW CASTLE COUNTY
STATE OF DELAWARE

No. 722, Civil Action, 1958

CITIES SERVICE GAS COMPANY, a Corporation, Plaintiff,

vs.

PAN AMERICAN PETROLEUM CORPORATION, a Corporation,
Defendant.

COMPLAINT—Filed June 25, 1958

Comes now plaintiff Cities Service Gas Company and for its cause of action against defendant Pan American Petroleum Corporation states:

1. Plaintiff is a citizen and a resident of the State of Delaware, it being a corporation duly organized and existing under the laws of that state.

2. Defendant is a citizen and a resident of the State of Delaware, it being a corporation duly organized and existing under the laws of that state.

3. Plaintiff and defendant on June 23, 1950, entered into a written contract designated "Gas Purchase Contract". A true copy of such contract, marked Exhibit "A", is attached hereto and made a part hereof.

Said Gas Purchase Contract, among other things, provides for:

(a) The sale and delivery by defendant to plaintiff, at the wellhead, of natural gas to be produced from certain lands in the ~~Kansas~~ Hugoton Field in the State of Kansas dedicated to the fulfillment and performance of such Gas Purchase Contract.

(b) A term of twenty years from June 23, 1950, and as long thereafter as gas is produced from such lands in commercial quantities from producing zones above sea level.

[fol. 287] (c) The payment by plaintiff to defendant until June 23, 1961, of:

- (1) A price of 8.4¢ per Mcf measured at a pressure base of 16.4 psia for gas having a heating value of 900 or more BTU's (British Thermal Unit) per cubic foot; and
- (2) a price decreased from 8.4¢ per Mcf at 16.4 proportionate to the deficiency of the heating value of such gas below 900 BTU's per cubic foot.

4. On December 2, 1953, the State Corporation Commission of the State of Kansas entered its Order in Docket No. 40,079-C (C-3216) providing that all parties taking gas from the Hugoton Gas Field in Kansas shall pay or attribute to such gas a price of not less than 11¢ per Mcf at 14.65 psia at the wellhead. A true and correct copy of such Price Order, marked Exhibit "B", is attached hereto and made a part hereof.

The effect of such Price Order, if valid, was to increase the cost to plaintiff as to:

- (a) gas having a BTU content of 900 or more from 8.4¢ per Mcf at 16.4 psia to 12.6¢ per Mcf at 16.4 psia; and
- (b) gas having a BTU content of less than 900 from less than 8.4¢ per Mcf at 16.4 psia to 12.6¢ per Mcf at 16.4 psia; or

when measured on a pressure base of 14.65 psia, as required by such Order; the effect of such Order, if valid, was to increase the cost to plaintiff as to:

- (a) gas having a BTU content of 900 or more from 7.3¢ per Mcf at 14.65 psia to 11¢ per Mcf at 14.65 psia; and
- (b) gas having a BTU content of less than 900 from less than 7.3¢ per Mcf at 14.65 psia to 11¢ per Mcf at 14.65 psia.

Such Order, if valid, imposed criminal sanctions for its violation, as provided in Secs. 55-708, 709, and 710, General

Statutes of Kansas, 1949. Each such Kansas Statute is set out verbatim as Exhibit "c" attached hereto and made a part hereof.

[fol. 288] 5. Thereafter, by plaintiff's letter to defendant dated January 21, 1951, the letter in reply thereto from defendant to plaintiff dated January 27, 1954, and checks issued by plaintiff and accepted by defendant in payment of gas received during each gas accounting month subsequent to the effective date of said Price Order, plaintiff and defendant entered into a contract, herein called "Refund Contract", wherein, among other things, it was agreed that should such Price Order be finally judicially declared to be invalid, then defendant would refund to plaintiff any overpayment made by plaintiff to defendant on account of such Price Order.

The body of the January 21, 1954 letter (omitting date, salutation, closing and signature) reads:

"The State Corporation Commission of the State of Kansas by Order dated December 2, 1953, in Docket No. 44079-C (C-3216) directed that on and after January 1, 1953, as a condition precedent for withdrawal of gas from the Hugoton Gas Field in Kansas, there shall be paid therefor or attributed thereto, at the wellhead, a minimum price of not less than eleven cents (11¢) per M.c.f. (14.65 pounds p.s.i.a.).

"Cities Service Gas Company and certain other parties filed Petitions in the District Court of Finney County, Kansas, for a judicial review of the said Order.

"Pending final judicial determination of the said Order and beginning January 1, 1954, Cities Service Gas Company intends to pay for all gas purchased by it in the Kansas Hugoton Field in strict compliance with the terms and conditions of the said Order. Such compliance with said Order by this Company, however, is made to avoid the penalties and actions provided by the Kansas statutes for a violation thereof, and the payments made to you in compliance with said Order pending its final judicial determination are to be considered and accepted by you as involuntary payments

on our part, without prejudice to our rights in said litigation, and in no event as an acquiescence by us in the validity of said Order.

[¶ 289] "In the event the said Order is finally judicially modified or declared to be invalid in whole or in part, as a result of which you have been overpaid for gas purchased during the interim aforesaid, Cities Service Gas Company will expect you to refund to it the amount of said over-payments."

The body of the January 27, 1954 letter (omitting date, salutation, closing and signature) reads:

"This refers to your letter of January 21, 1954, relating to payments for Kansas Hugoton Gas on and after January 1, 1954 under Gas Purchase Contract dated June 23, 1950. We construe the last paragraph of said letter to mean that Cities will expect Stanolind to refund to it the amount of over-payments, if any, without any interest thereon should the said Order of December 2, 1953, be finally judicially modified or declared to be invalid in whole or in part by an adjudication which would be binding and controlling on Stanolind. We will, therefore, accept payments on this basis."

Each check issued by plaintiff and accepted by defendant in payment for gas subsequent to the effective date of said Price Order and until December 23, 1957, contained the following statement:

"In full settlement of gas purchased for the period ending *(appropriate date was here inserted on each check)*, subject to the provisions of letters dated August 25, 1953 and January 21, 1954, with reference to gas purchased in Kansas."

The letter of August 25, 1953 referred to in the foregoing statement is not material herein.

6. Plaintiff instituted an action in the District Court, Finney County, Kansas, for a judicial review of such Price Order, contending such Order was void ab initio because

the State Corporation Commission of Kansas had no jurisdiction to issue such Order. The State District Court affirmed the Order. Plaintiff appealed to the Kansas Supreme Court; which court affirmed the Order, 180 Kan. 454, 304 P. 2d 528. On appeal, the United States Supreme Court reversed the Kansas Supreme Court on January 20, 1958, — U.S. —, 2 L.Ed. 2d 355.

[fol. 290] On April 14, 1958, the Kansas Supreme Court issued its Order and mandate vacating and setting aside its previous judgment affirming such Price Order.

7. By reason of the facts herein set out and under the provisions of said Refund Contract, defendant became obligated to promptly refund to plaintiff all overpayments plaintiff had made to defendant. That for gas received by plaintiff under said Gas Purchase Contract, plaintiff has made overpayment to defendant therefor in the principal sum of \$10,324,468.67 during the period January 1, 1954 to and including November 22, 1957. That plaintiff has made demand upon defendant for the refund to plaintiff of said principal amount but defendant has failed, neglected and refused to make refund of such overpayments or any part thereof to plaintiff; therefore, defendant is indebted to plaintiff in the principal sum of \$10,324,468.67.

8. To avoid the criminal sanctions imposed by the Kansas Statutes for the violation of said Price Order, plaintiff made the above described overpayments to defendant involuntarily, under protest in compliance with and under the compulsion of said Price Order and upon condition that defendant would promptly refund to plaintiff such overpayments if said Price Order should be finally judicially determined to be invalid, as stated in said Refund Contract.

9. By reason of the facts hereinabove stated, defendant has become obligated and indebted to plaintiff as follows:

(a) Defendant by reason of said Refund Contract is legally obligated to refund to plaintiff the aforesaid total principal sum of \$10,324,468.67 with interest thereon at 6% per annum from January 20, 1958: or

[fol. 291] (b) By reason of the promulgation by the State Corporation Commission of Kansas of said Price

Order and the liabilities and criminal sanctions imposed by the Kansas Statutes for the violation of said Price Order, plaintiff was compelled involuntarily to comply with said Price Order and make such overpayments to defendant and that by reason of the final judicial determination of the invalidity of said Price Order by the United States Supreme Court, and the District Court, Finney County, Kansas, defendant became and is legally and equitably obligated to make restitution to plaintiff of such overpayments in the aforesaid principal sum of \$10,324,468.67 with interest thereon at 6% per annum from January 20, 1958; or

(c) By reason of the receipt by defendant of such overpayments, involuntarily paid by plaintiff, defendant has been unjustly enriched in the aforesaid principal sum of \$10,324,468.67 and thereby became and is legally and equitably obligated to restore and repay such overpayments to plaintiff with interest thereon at 6% per annum from January 20, 1958.

WHEREFORE, Plaintiff demands judgment against defendant for the principal sum of \$10,324,468.67, together with [fol. 292] interest thereon at 6% per annum from January 20, 1958, and for all other relief to which plaintiff may be entitled in the premises and for costs of this action.

John J. Morris, Jr., Howard L. Williams, Of Morris, James, Hitchens & Williams, Attorneys For Plaintiff, 350 Delaware Trust Building, Wilmington, Delaware.

Conrad C. Mount, O. R. Stites, Gordon J. Quilter, Of Counsel, c/o Cities Service Gas Company, First National Building, Oklahoma City, Oklahoma.

				MARCH	1960	7.	7-1-C
3)	Completes June 2, 1954 filing No specified effective date required.						
8)	not stated.						
5)	Increase in rate due to Kansas State gas severance tax of 1% effective 7-1-57						
4)	Price subject to adjustment for Btu content.						
2)	Filing completed 7-31-57						
6)	Understanding as to basis of refund in event Kansas minimum price is declared excessive.						
4)	Kansas State Corporation Commission Minimum Price Order - H.O. rate at 1965 price.						

[fol. 293]

EXHIBIT A TO COMPLAINT

GAS PURCHASE CONTRACT

between

STANOLIND OIL AND GAS COMPANY
(Seller)

and

CITIES SERVICE GAS COMPANY
(Buyer)

Hugoton Field, Kansas

[fol. 294] GAS PURCHASE CONTRACT

THIS AGREEMENT, made and entered into as of the 23rd day of June, 1950, by and between STANOLIND OIL AND GAS COMPANY, a Delaware corporation, hereinafter referred to as "Seller", and CITIES SERVICE GAS COMPANY, a Delaware corporation, hereinafter referred to as "Buyer";

WITNESSETH : That

WHEREAS, heretofore under date of June 13, 1946, Seller and Buyer entered into a Gas Purchase Contract providing for the sale and purchase of natural gas produced or to be produced from certain lands in the Kansas-Hugoton Field, said lands being set out and designated as Area "A" on the plat attached hereto, marked Exhibit "A", and made a part hereof, which said Gas Purchase Contract was amended by letter agreements dated, respectively, June 13, 1946, December 9, 1946, July 31, 1947, June 18, 1948, and December 9, 1948, and by that certain Amendment to Gas Purchase Contract dated March 8, 1950; and

WHEREAS, Seller owns oil and gas leases covering approximately four hundred thousand (400,000) acres of land in the Kansas-Hugoton Field in addition to the lands covered by the said Contract of June 13, 1946, as amended, said additional lands being set out and designated as Areas "B" and "C" on the said plat marked Exhibit "A" which

such Exhibit "A" shall be supplemented within six (6) months from the date hereof by a complete tabulation of Seller's interest in all of the lands and leases covered by said Exhibit "A"; and

WHEREAS, Buyer, in order to meet the demands of its expanding market, desires to obtain substantial quantities of gas in addition to the quantities of gas produced or to be produced by Seller from the lands covered by the said Contract of June 13, 1946, as amended, so that Buyer will have supplies of merchantable natural gas ample to meet, insofar as prudently possible at all times and over a long period of time, the demands of its customers at the various [fol. 295] times such demands occur in its widely distributed markets; and

WHEREAS, Seller desires to sell all of its merchantable natural gas produced or to be produced from gas wells only from producing zones at depths above sea level from said additional lands and is willing to sell all of such natural gas to Buyer upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual covenants hereof and of the dedication by Seller of additional gas reserves to Buyer's requirements, it is hereby mutually stipulated and agreed by and between the parties hereto as follows, to wit:

ARTICLE I

Supersedure

Upon execution of this agreement by both Seller and Buyer, the Gas Purchase Contract between the said parties dated June 13, 1946, as amended, above referred to, shall be effective as of 7:00 o'clock a.m. Central Standard Time, June 23, 1950, be superseded by this agreement and shall be of no further force and effect from and after said time and date.

ARTICLE II

Definitions

As used in this agreement, the following terms, words, and phrases shall have the following meanings:

1. *Dedicated Reserves* shall mean Seller's gas rights in and to the gas producing zones at depths above sea level covered by lands and leases set out as Areas "A", "B", and "C" on the plat attached hereto and marked Exhibit "A".

2. *Natural Gas* or *Gas* shall mean gas produced from gas wells only from producing zones at depths above sea level, and does not include gas produced from zones from any other depth or gas produced from oil producing formations in conjunction with the production of oil.

3. *Deliverability* shall mean that quantum of measurement of the productive capacity of a well as defined by the rules, regulations, and order of the State Corporation Commission of Kansas, as now determined or hereafter fixed; [fol. 296] and in the event and whenever such deliverability shall cease to or not be defined by the State Corporation Commission of Kansas or some other State or Federal regulatory body having lawful jurisdiction and authority, then by such reasonable determination as the parties may agree upon, or, failing therein, a fair standard for the determination of the ability of the various wells in the Kansas-Hugoton Field to produce gas against a reasonable percentage of the average seventy-two (72) hour shut-in pressure of all the wells in the Kansas portion of said Field.

4. A *Commercial Well* shall mean any well having an initial deliverability of at least 100 MCF of gas per day having an average gross heating value or not less than 700 BTU's per cubic foot.

5. The term "average gross heating value" shall mean the number of BTU's produced by combustion at constant pressure of the amount of gas saturated with water vapor which would occupy a volume of one cubic foot at a temperature of sixty degrees Fahrenheit (60° F.) and under a pressure equivalent to that of thirty (30) inches of mercury at thirty-two degrees Fahrenheit (32° F.) and under the

standard gravitational force (the acceleration 980.665 c.m. per. sec. per. sec.), with air of the same temperature and pressure as the gas when products of combustion are cooled to the initial temperature of gas and air and when the water formed by combustion is condensed to the liquid state.

6. *Fiscal Accounting Month* shall mean that period of time extending from the 23rd day of each calendar month to the 22nd day, inclusive, of the next succeeding calendar month.

ARTICLE III

Seller's Reservations

Seller hereby expressly reserves and excepts from the terms of this agreement such quantities of gas produced from the acreage described on Exhibit "A" as may at all times and from time to time be required by Seller in its sole opinion and discretion as a prudent operator for the following purposes:

1. Fuel when required to drill oil or gas wells on such acreage or on Seller's adjacent acreage and for all other operation requirements incident thereto;

[fol. 297] 2. Fuel when required for use in internal combustion engines employed in lifting oil to the surface of the ground from any oil well hereafter drilled on such acreage;

3. Fuel for stoves and inside lights in the principal dwelling located on the leaseholds covering such acreage, to the extent required by the present oil and gas leases on such acreage and to supply gas required under right-of-way and similar agreements.

4. Fuel for irrigation purposes to the extent reasonably required by Seller in the operation of its oil and gas properties.

Seller hereby expressly reserves and excepts from the terms of this agreement all of the liquid and liquefiable hydrocarbons contained in the gas produced from said Areas "A" and "B" specified on Exhibit "A" and removed from said gas by Seller under the same terms and condi-

tions as set out in that certain Processing Agreement between the parties hereto dated June 23, 1950, in its Stano gasoline plant located in Section 5, Township 29 South, Range 38 West, Grant County, Kansas, as the same may exist from time to time.

The obligations of Seller hereunder are subject to the ability of Seller's wells to produce without waste and in accordance with prudent gas field practice. The control and operation of Seller's land and leaseholds producing gas sold to Buyer hereunder shall be and remain the exclusive right of Seller.

ARTICLE IV

Dedication

1. Subject to Seller's reservations and subject to the right of substitution, withdrawal, surrender, and disposal of acreage and gas rights under the terms and limitations of this agreement, Seller hereby dedicates to the fulfillment and performance of this agreement all of the dedicated reserves, together with all commercial gas wells drilled thereon as herein contemplated, and Seller agrees and covenants to maintain, at its own cost and expense, the dedicated reserves and substitutions therefor in full force and effect [fol. 298] until such dedicated reserves are either perpetuated by production of gas wells drilled on such acreage or released from dedication as herein provided, or until such lands and leases or portions thereof are proven unproductive of gas in commercial quantities, or until such leases or portions thereof have been tendered to Buyer as herein provided.

2. Seller shall have the right from time to time during the term of this agreement to substitute acreage of equal value and extent for a like amount of acreage described and included in Exhibit "A" (or acreage substituted therefor) upon the following conditions:

(a) Seller shall first obtain the written approval of Buyer to such substitution, and Buyer agrees that it will not capriciously or unreasonably withhold its approval, except that Seller shall have the right without

the consent of Buyer to exchange or trade acreage dedicated hereunder with any acreage in the Kansas-Hugoton Field dedicated to the same market to which Buyer is selling gas. Seller immediately shall notify Buyer of any such exchange or trade.

(b) Any acreage so substituted shall upon substitution immediately be dedicated in the same manner and to the same extent theretofore attaching to the acreage described in Exhibit "A" (or acreage substituted therefor) for which other substitution is made.

(c) Seller shall prepare and forward to Buyer for execution a written release in recordable form, which Buyer will execute and acknowledge, which by its terms shall release from the dedication the acreage specified in Exhibit "A" (or acreage substituted therefor) for which other acreage has been substituted.

(d) Seller shall have the right, without the consent of Buyer, to rearrange and adjust acreage comprising its existing and future production units in order to comply with existing and future orders of the State Corporation Commission of Kansas, including the right to exchange acreage for such purposes, and in such event Seller shall immediately notify Buyer of such action.

[fol. 299] 3. Seller agrees that it shall endeavor in good faith to keep and maintain all of its leases on said lands covered by Exhibit "A" in full force and effect. If at any time Seller deems any of its leases or any part thereof to be condemned and no longer of any value or undesirable for it to keep or develop, it shall tender to Buyer, at least sixty (60) days prior to the expiration date of any such lease, an assignment of such lease or leases or portions thereof which Seller wishes to surrender. If Buyer fails to accept such assignment within thirty (30) days after the date of tender thereof, then Seller may at its option release and surrender or otherwise dispose of such lease or portions thereof. If Buyer accepts such assignment of any lease or portion thereof upon which there is a gas well, Buyer

shall pay to Seller the reasonable salvage value of the well and the casing and equipment therein and thereon and used in connection therewith.

ARTICLE V

Sale and Purchase

1. Subject to and in accordance with the terms of this agreement, Seller agrees to sell and deliver to Buyer and Buyer agrees to purchase and receive all gas produced from the dedicated reserves and acreage substituted therefor as hereinabove provided. It is understood that said Exhibit "A" indicates lands and leases in which Seller owns either the entire gas rights or only a partial interest therein, and in this connection it is agreed by Seller and Buyer that Seller is only selling and Buyer is only purchasing the gas produced from such acreage which is attributable to Seller's interest therein, whatever that interest may be. Seller shall deliver gas hereunder to Buyer in such volumes and at such times as requested by Buyer up to the delivery capacity of the wells of Seller located on the acreage specified in Exhibit "A", provided, however, that Seller shall not be required to operate its wells in a manner not conforming to usual good practice in the industry.

2. Subject to the ability of Seller's wells to produce without waste in accordance with good gas field practice and to the requirements relating to quality as set forth in Article XI hereof, Buyer agrees that, with respect to and within [fol. 300] the limits of its markets to which Buyer shall deliver gas purchased hereunder and subject to paragraph 3 of this Article V it shall, insofar as possible, purchase and take from each well covered hereby natural gas ratably with its takes of natural gas from all other wells in the Kansas-Hugoton Field for such markets or, if it is not possible so to do, then in any event Buyer shall purchase and take from the acreage covered hereby an aggregate quantity of natural gas ratably with its takes of natural gas from all other acreage in the Kansas-Hugoton Field for such markets. It is recognized and agreed that in taking natural gas ratably Buyer will be unable, due to varying operating conditions, to withdraw natural gas in exact

ratable proportions during any specific month, but Buyer agrees that to the best of its ability it will maintain said ratable purchases hereunder by balancing excesses against deficiencies during each twelve (12) months period ending January 22. If during the year preceding any January 22 Buyer has taken less or more than Seller's ratable share of Buyer's market, and within twelve (12) months thereafter has been unable to bring such ratable takes in balance, then Buyer shall pay Seller for deficiencies in takes within thirty (30) days thereafter. "Ratably" or "Ratable" as used herein means in proportion to well allowables lawfully fixed and determined by the State Corporation Commission of Kansas, and if well allowables shall cease to be fixed and determined by said Commission or other regulatory body having jurisdiction thereover, then in proportion to the deliverability of the wells and the acreage attributable thereto from which Buyer shall be producing or purchasing gas in the Kansas-Hugoton Field for the same market.

3. Buyer shall construct and shall at all times maintain a gathering system, complete with pipe lines and compression equipment, in conformity with general practice of other gatherers in the Hugoton Field, however, in the event and whenever the quantities of gas which Buyer is obligated to take from Seller under Section 2 hereof shall not be sufficient with respect to any lease on acreage covered hereby to (1) prevent drainage of the same by wells of others or (2) prevent loss of such lease by Seller, then within thirty (30) days after written notice by Seller to Buyer of either [fol. 301] of such facts, Buyer shall commence taking gas from the well or wells located on such lease acreage in sufficient quantities to prevent such drainage or loss of such lease if such well or wells are able to deliver such quantities of gas into Buyer's facilities, or, if such well or wells are only able to deliver at pressures appreciably less than offset wells and therefore are not so able to deliver into Buyer's facilities, Buyer shall so long as such condition exists take such measures as may be necessary to prevent loss or forfeiture of such lease by Seller. Nothing in this paragraph shall operate to increase Buyer's obligation to take an aggregate quantity as provided in paragraph 2 of this Article V.

4. So far as practicable, Seller shall deliver to Buyer and Buyer shall take gas hereunder continuously, having due regard for the seasonal variation in the receipts of all gas by Buyer for the same market. Buyer agrees to notify Seller of any substantial increase in its daily requirements, and Seller agrees to notify promptly the designated agent for Buyer, or such other agent as may be agreed upon between the parties, of any interruptions affecting the delivery of gas hereunder, and also in order to meet current fluctuations in the requirements of Buyer, Seller shall begin, increase, decrease, or suspend the delivery of gas hereunder on the telephonic orders of such designated agent or such other agent.

ARTICLE VI

Development and Connection

1. At the date of this agreement the acreage specified as Areas "A", "B", and "C" has not been fully developed for the production of gas. It is recognized by the parties hereto that Buyer's markets must be further developed and expanded in order to enable Buyer to absorb the additional quantities of gas purchased by it hereunder, and that Seller must drill and complete additional wells on the acreage dedicated hereunder in order to supply such gas to Buyer. In this connection it is agreed by the parties hereto that, to the best of their abilities and to the greatest extent practicable in accordance with prudent operations, the rate of development of such acreage shall be commensurate with [fol. 302] the rate of development and expansion of Buyer's market. To this end Seller and Buyer agree to use due diligence in complying with the respective obligations imposed upon them by the provisions of this Article VI, but it is agreed that if either party is unable to comply with its said obligations because of inability due to force majeure to obtain pipe or other material and equipment necessary for its compliance with any such obligation within the performance period applicable thereto, then such period shall be extended until the necessary pipe or other material and equipment can be obtained and the required construction of facilities or drilling can be completed. Nothing in this para-

graph shall be construed as in any way limiting or restricting the scope or applicability of Article XVI (Force Majeure) of this agreement.

On and after the date of this agreement, Buyer shall connect to all commercial wells drilled by Seller in said Area "A" as provided in paragraph 2 (a) of this Article VI.

From the date of this agreement until January 1, 1956, for said Areas "B" and "C" it is anticipated that the gathering system expenditure schedule as set out in the table below is adequate to meet the estimated development schedule also set out in the table below in order to permit connection by Buyer to the wells so drilled as selected by Seller; however, if the expenditure schedule is inadequate to connect all wells so scheduled, then Seller shall either curtail the development rate or shall designate the order in which such wells shall be connected, and Buyer shall be obligated to connect wells as designated up to but not exceeding the cumulative expenditures by the end of any year set out in the table below.

Year	Estimated Number of Wells Drilled, to Be Drilled or Caused to Be Drilled by Seller		Cumulative Maximum Direct Expenditure for Gathering System and Well Connections by Buyer by the End of Each Year	
	Area B	Area C	Area B	Area C
1950				
1951	115	37	\$3,291,000	\$2,044,000
1952	44	48	3,636,000	2,625,000
1953	74	69	4,366,000	3,952,000
1954	34	51	4,676,000	4,466,000
1955	8	20	4,774,000	4,672,000
TOTAL	275	225		

[fol. 303] From and after January 1, 1956, Buyer shall connect to all commercial wells drilled by Seller in said Areas "B" and "C".

2. Buyer, subject to the provisions of Section 1 of this Article VI, and Section 3 of Article V, shall connect all commercial wells completed by Seller on the acreage cov-

ered hereby to its gathering system and thereafter purchase and pay for the gas produced therefrom under the terms of this agreement so long as such well is capable of producing against at least 50 psig flowing pressure. The time for such connection to be made by Buyer for each well in each of said areas shall be as follows:

(a) Area "A": Within sixty (60) days after the receipt by Buyer of notice by Seller that a commercial well has been completed thereon;

(b) Areas "B" and "C": Within ~~sixty (60)~~ ^{one hundred twenty (120)} days after receipt by Buyer of notice by Seller that a commercial well has been completed thereon or on June 1, 1951, whichever is the later date; provided, however, if at any time prior to June 1, 1951, Seller has a well on a lease which is in danger of forfeiture for lack of market, then Buyer shall within thirty (30) days after receipt of notice from Seller of such fact (i) begin or cause the purchase and receipt of gas from such well, or (ii) take such measures as may be necessary to prevent loss or forfeiture of such lease, or (iii) release such well and lease from the terms of this agreement. S.B. JE

If Buyer fails to receive and purchase the gas tendered from any well on the dates required hereunder, Buyer shall nevertheless pay for the quantity of gas which could have been produced and sold to Buyer hereunder if Buyer had commenced taking the gas within the time herein provided. Such payments shall continue until actual deliveries are commenced, and payments made for gas not actually taken shall be considered as damages for Buyer's failure to comply herewith, and Buyer shall not have the right to later receive free of cost any gas to replace the gas so paid for but not taken.

3. If and whenever during the term of this agreement the operation of any well covered hereby shall become unprofitable to Seller, in its sole opinion, Seller shall have [fol. 304] the right to tender an assignment of such well and the acreage allocated thereto to Buyer and if Buyer

does not accept such assignment within sixty (60) days after such tender, then Seller shall have the right to abandon such well and thereby release it from the terms of this agreement.

4. It is recognized by the parties hereto that Seller is presently selling gas to other purchasers on the acreage dedicated hereunder from the following gas wells:

Well Designation	Located In	Purchaser	Earliest Contract Termination Date	Notice Required to Terminate
Waechter "H"	6-26-37	Colo. Inter.	3-1-51	6 mos.
Waechter "F"	7-26-37	" "	30 days	30 days
Wilets "B"	15-26-38	" "	*10-16-52	One Day
Beymer "B"	7-25-36	" "	4-1-51	6 mos.
Dan	2-25-37	" "	*10-16-52	One Day
Campbell "D"	3-25-37	" "	*10-16-52	One Day
Shell	4-25-37	" "	*10-16-52	One Day
Beymer "A"	12-25-37	" "	4-1-51	6 mos.
Strawn	14-25-37	" "	1-1-51	6 mos.
ate-Hutton	28-25-37	" "	3-1-51	6 mos.
D. Hillman	27-24-37	" "	90 days	90 days
G. Morris	36-23-36	" "	*10-16-52	*One Day
Hields	4-25-35	Kans.-Nebraska	Day to day	One Day
White "B"	6-25-36	" "	30 days	30 days
Lawford	7-24-34	" "	30 days	30 days
Martin	14-24-35	" "	30 days	30 days
Shen	15-24-35	" "	6 mos.	6 mos.
Elton	16-24-35	" "	30 days	30 days
odge City	17-24-35	" "	2-8-51	30 days
Entrup	18-24-35	" "	2-11-51	30 days
rr	31-24-35	" "	30 days	30 days
eeve	11-25-33	Northern Nat'l	10 days	10 days

*If not terminated by 10-16-52 will remain committed until 2-14-67.

It is agreed that Seller shall cancel said contracts on the earliest date respectively permitted thereunder after receiving notice from Buyer that it has completed gathering facilities adequate to take the gas produced from the wells covered by said contracts or that Buyer desires to have

such contracts canceled. As and when each of said contracts has been canceled by Seller, Buyer shall forthwith connect or arrange for the connection of the wells covered thereby so that an uninterrupted flow of gas from these wells may be maintained. Buyer agrees to use its best efforts to construct and complete its gathering system or portion thereof, [fol. 305] at such times as are equivalent to the earliest dates on which each of said contracts may be canceled.

ARTICLE VII

Delivery Point

1. The points of delivery for all gas sold and purchased hereunder shall be at the mouths of the respective wells on the acreage covered hereby.

2. Insofar as Seller is able to convey such rights, Buyer shall have and it is hereby granted an easement and servitude on the acreage covered hereby for installing, operating, and maintaining equipment used in conjunction with the measurement and removal of gas sold and purchased hereunder; shall have the right to operate, inspect, and test such equipment at any time, and shall have free access at all times to any part of Seller's leaseholds for any purpose connected with any matter or thing covered by this agreement.

3. Seller shall be deemed to be in control and possession of the gas deliverable hereunder and responsible for any damage or injury caused thereby until said gas shall have been delivered to Buyer at the delivery points herein provided, after which delivery Buyer shall be deemed to be in exclusive control and possession of the gas and responsible for any injury or damage caused thereby except for the interval during which the gas is being processed by Seller.

ARTICLE VIII

Term

This agreement shall remain in full force and effect from the date hereof for a period of twenty (20) years from said date and as long thereafter as gas shall be produced from

the acreage covered hereby in commercial quantities from producing zones above sea level.

ARTICLE IX

Price and Payment

1. Buyer shall pay Seller for all gas purchased by it hereunder the price of 8.4 cents per 1,000 cubic feet until June 23, 1961.

[fol. 306] 2. For all natural gas purchased by Buyer from and after June 22, 1961, the price of such gas shall be the fair and reasonable price for each successive five (5) year period thereafter based on and compared with the price for gas then being paid by other purchasers in the field under similar contracts and conditions, but in no event shall the price be less than 12 cents per 1,000 cubic feet.

3. It is expressly stipulated that the delivery of gas by Seller under this agreement shall not be interrupted because of delay in the determination of the applicable price and the delivery of gas shall continue at the previous effective price. Upon determination of the new price, the price shall be applied retroactively to gas sold during the period when the price was undetermined.

4. If during any fiscal accounting month as herein defined the average gross heating value of the gas delivered by Seller from either the acreage designated as Area "C" on Exhibit "A" or the composite stream from the acreage designated as Areas "A" and "B" on Exhibit "A" shall fall below 900 BTU's per cubic foot, then the price applicable hereunder to be paid by Buyer to Seller for gas delivered during such month from said Area "C" or said Areas "A" and "B" shall be decreased proportionately to the deficiency in gross heating value below 900 BTU's per cubic foot; provided, however, if during any fiscal accounting month, as herein defined, the average gross heating value of the composite stream of the gas delivered by Seller from said Areas "A" and "B" shall fall below 925 BTU's per cubic foot as the result of the processing of such gas by Seller, then the price applicable hereunder to be paid

by Buyer to Seller for such gas delivered during such month shall be decreased proportionately to the deficiency in gross heating value below 925 BTU's per cubic foot.

5. Buyer shall render to Seller a statement on the 5th day of each calendar month showing the quantity of gas taken by Buyer hereunder during the next preceding fiscal accounting month. Payment for the quantity of gas reported on such statement shall be made by check delivered to Seller on the 25th day of the same calendar month. Seller may accept such statement and the payment based thereon, [fol. 307] and in the event the same is found incorrect under the provisions hereof, adjustments and payments shall be made accordingly.

ARTICLE X

Measurement

1. The unit of measurement for natural gas sold and purchased hereunder shall be a cubic foot of gas, and the term "cubic foot of gas" wherever used in this agreement shall mean a cubic foot of gas at 16.4 pounds absolute pressure per square inch and at a temperature of sixty degrees (60°) Fahrenheit; provided, however, the unit of measurement for the determination of heating value, hydrogen sulfide content, and sulfur content shall be a cubic foot of gas saturated with water vapor at an absolute pressure of thirty (30) inches of mercury and a temperature of sixty degrees (60°) Fahrenheit.

2. The volume of gas delivered hereunder shall be measured at prevailing meter pressures, and the volume thereof shall be computed on a pressure base of 16.4 pounds per square inch absolute and on a temperature base of sixty degrees (60°) Fahrenheit. It is assumed and agreed that the gas delivered hereunder obeys Boyle's Law and the flowing temperature of the gas in the meter is sixty degrees (60°) Fahrenheit.

The volume shall be computed in accordance with the method prescribed in Gas Measurement Report No. 2; American Gas Association, including the appendix thereto, as published May 6, 1935, or such revisions as may be

mutually agreed upon. It is assumed and agreed that the values of the Reynolds number factor and the expansion factor are one. Specific gravity determinations for the purpose of measurement computations shall be made semi-annually at each meter in accordance with an approved method, and these determinations so made shall be used for calculating the volume of gas delivered hereunder.

3. Buyer at its own cost and expense shall install and maintain in accurate repair at the points of delivery hereunder orifice meters of ample size and type and of standard manufacture for the accurate measurement of gas delivered hereunder, and Buyer shall cause said meters to be read at [fol. 308] proper intervals. The meters and respective meter readings and meter charts of Buyer shall be at all reasonable times accessible to inspection and examination by Seller. The meters shall be calibrated once each month and the orifice plates shall be inspected and calipered at least once each year by and at the expense of Buyer but in the presence of a representative of Seller, if Seller so elects. Reading, calibration, and adjustment of Buyer's meters and changing of charts shall be done only by Buyer, but all data with respect thereto shall at all reasonable times be available to Seller. It is recognized that in some instances it may be impractical to locate said meters at the point of delivery. If in Buyer's opinion it is desirable to locate any meter elsewhere on the lease, then Buyer agrees in such instances to pay Seller for any substantial loss of gas occurring between the point of delivery and such meter.

4. Seller may at its option and expense install and operate check meters to check Buyer's meters, but measurement of gas for the purposes of this agreement shall be by Buyer's meters. Check meters shall be of the orifice type and shall be subject at all reasonable times to inspection or examination by Buyer, but the reading, calibration, and adjustment thereof and changing of charts shall be done only by Seller.

5. If any meter of Buyer's is found to be inoperative or inaccurate, it shall be adjusted to register correctly. The amount of the error shall be determined by the most accurate method found feasible, and if the error is more

than two per cent (2%) in the measurement of gas, then the calculated deliveries of gas through such meter shall be adjusted to zero error to compensate for such error. Such adjustment shall be made for such period of inaccuracy as may be definitely known, or if not known, then for one-half the period since the date of the last test.

ARTICLE XI

Quality

1. All gas delivered by Seller to Buyer under the terms of this agreement shall conform to the following specifications:

[fol. 309] (a) The gas shall not contain in excess of one grain of hydrogen sulfide per 100 cubic feet and shall not contain in excess of twenty (20) grains of total sulfur per 100 cubic feet;

(b) The gas shall not contain oxygen in excess of one per cent (1%) by volume;

(c) The gas delivered at each delivery point shall be commercially free from solid matter, dust, gums, and gum forming constituents which might interfere with its merchantability or cause injury to or interfere with the proper operation of the lines, regulators, meters or other appliances through which it flows.

(d) The gas shall be practically free of water, crude oil, impurities and other objectionable substances, and Seller shall use every reasonable effort to keep the gas entirely free from such liquids and objectionable substances, but shall not be required to install and operate dehydration facilities.

Buyer shall have the right at its election to discontinue or curtail purchases of gas which does not conform to the above specifications.

In the event Buyer shall discontinue taking gas from any well by reason of any of the provisions of this Article, and if in Seller's opinion the gas from such well could not be made acceptable to Buyer by diligent effort, Seller shall

thereafter have the right to use or sell the gas from any such well to others free of this contract, and upon written request by Seller the well and the acreage allocated thereto shall thereafter be released from the terms of this contract by Buyer.

ARTICLE XII

Taxes

As between the parties hereto, Seller shall bear or be responsible for the payment of all taxes assessed upon or in respect to the gas produced, sold, and delivered hereunder up to the delivery thereof to Buyer, and Buyer shall bear or be responsible for the payment of all taxes assessed upon or in respect to such gas on and after such delivery, except that Buyer shall pay Seller for 65 per cent of the [fol. 310] amount by which from month to month the total of all excise taxes hereafter levied and assessed with respect to the gas produced, sold, and delivered by Seller to Buyer hereunder exceeds the total of all such taxes now levied and assessed with respect to such gas at the date of this agreement, provided that Buyer shall not be obligated to pay for any part of such excess amount attributable to any new or additional tax or taxes which is based upon or measured by the natural gasoline or other liquefied hydrocarbon content extracted from the gas. This payment shall be made from month to month as the taxing agency's rights to collect such taxes accrue and as Buyer pays for gas billed to it hereunder for the preceding month. In no event shall this clause be construed to impose on Buyer any obligation to bear any portion of any ad valorem tax, income or excess profits tax, capital stock or franchise tax assessed against Seller.

ARTICLE XIII

Regulatory Bodies

This contract is subject to all present and future valid laws and lawful orders of all regulatory bodies now or hereafter having jurisdiction of the parties.

ARTICLE XIV

Warranty of Title

Seller hereby warrants title to the gas sold hereunder and the right of Seller to sell the same, and Seller warrants that all such gas is owned by Seller free from all liens and adverse claims, including liens to secure payment of production taxes, severance taxes, and other taxes. Seller shall at all times have the obligation to make settlements for all royalties due and payments to Seller's mineral and royalty owners and to make settlements with all other persons having any interest in the gas sold hereunder, and Seller agrees to indemnify Buyer and save it harmless from all suits, actions, debts, accounts, damages, costs, losses, and expenses arising from or out of adverse claims of any and all persons to said gas or to royalties, taxes, license fees or charges thereon which are applicable before the title thereto passes to Buyer or which may be levied and [fol. 311] assessed upon the sale thereof to Buyer subject to the terms of Article XII. In the event of any adverse claim of any character whatsoever being asserted in respect to any of said gas, Buyer may retain as security for the performance of Seller's obligations with respect to such claim under this Article the purchase price thereof up to the amount of such claim, without interest, until such claim shall have been finally determined, or until Seller shall have furnished surety bond to Buyer conditioned for the protection of Buyer with respect to such claim.

ARTICLE XV

Indemnity

Each of the parties hereto assumes full responsibility and liability in the maintenance and operation of its respective properties and those under the respective control of said parties and agrees to indemnify and save harmless the other party from all liability and expense on account of any and all damages, claims, actions, costs and expenses, including injury to and death of persons arising from any act or accident in connection with the installation, presence, maintenance, and operation of the property and equipment of the indemnifying party.

ARTICLE XVI

Force Majeure

In the event of either party hereto being rendered unable, wholly or in part, by force majeure to carry out its obligations under this agreement, other than to make payments due hereunder, it is agreed that on such party giving notice and full particulars of such force majeure in writing, or by telegraph, to the other party as soon as possible after the occurrence of the cause relied on, then the obligations of the party giving such notice, so far as they are affected by such force majeure, shall be suspended during the continuance of any inability so caused but for no longer period, and such cause shall as far as possible be remedied with all reasonable dispatch.

[fol. 312] The term "force majeure" as employed herein shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of governments and people, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, freezing of wells or lines of pipe, partial or entire failure of wells, and any other causes, whether of the kind herein enumerated or otherwise, not within the control of the party claiming suspension, and which by the exercise of due diligence such party is unable to prevent or overcome; such term shall likewise include (a) in those instances where any party hereto is required to obtain servitudes, rights-of-way grants, permits or licenses to enable such party to fulfill its obligation hereunder, the inability of such party to acquire, or the delays on the part of such party in acquiring, at reasonable cost and after the exercise of reasonable diligence, such servitudes, rights-of-way grants, permits or licenses, and (b) in those instances where any party hereto is required to furnish materials and supplies for the purpose of constructing or maintaining facilities or is required to secure permits or permissions from any governmental agency to enable such party to fulfill its obligation hereunder, the inability of such party to acquire, or the

delays on the part of such party in acquiring, at reasonable cost and after the exercise of reasonable diligence, such materials and supplies, permits and permission.

It is understood and agreed that the settlement of strikes or lockouts shall be entirely within the discretion of the party having the difficulty and that the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts by acceding to the demands of opposing party when such course is inadvisable in the discretion of the party having the difficulty.

ARTICLE XVII

Miscellaneous

1. Any notice or notices given by either party under the [fol. 313] terms of this agreement shall be sent by registered mail to the following addresses:

- (a) Cities Service Gas Company
First National Building
Oklahoma City 1, Oklahoma
- (b) Stanolind Oil and Gas Company
Post Office Box 591
Tulsa 2, Oklahoma

The address of either party hereto may be changed under this Section at any time upon written notice. The date of service by mail shall be the date on which such written notice is deposited in the United States Post Office addressed as above provided and with all postage and charges fully prepaid.

2. Seller and Buyer mutually covenant and agree that if at any time during the term of this agreement either party shall sell or otherwise dispose of any of its properties or arrange for the operation thereof which are applicable to or used in the performance of this agreement, such sale, disposition, or arrangement shall only be made to or with a responsible party and shall be made specifically subject to this gas purchase contract; provided, however, that nothing herein contained shall be construed to prevent

either party from pledging all or any portion of its property as security under any mortgage, deed of trust, or other similar lien.

3. It is hereby agreed that this agreement shall be subject to the condition that nothing herein shall be construed as affecting any of the relations between the United States and its lessee, particularly in matters of gas waste, taking royalty in kind and the method of computing royalties due as based on a minimum valuation and in accordance with the terms and provisions of the oil and gas operating regulations applicable to the lands covered by this agreement, and subject to any condition, modification, or revocation that may be prescribed upon review thereof by the Director, Geological Survey, United States Department of the Interior.

4. This agreement and each of its covenants and obligations shall inure to the benefit of and be binding upon the successors, trustees, and assigns of the parties hereto.

[fol. 314] IN WITNESS WHEREOF the parties hereto have duly executed this agreement as of the date first above written.

STANOLIND OIL AND GAS COMPANY

By /s/ J. E. ROUE
Vice President

ATTEST:

/s/ (Illegible)
Assistant Secretary

[SEAL]

CITIES SERVICE GAS COMPANY

By /s/ S. B. IRELAN
President

ATTEST:

/s/ W. R. MORTON
Secretary

[SEAL]

[fol. 315] • ACKNOWLEDGMENTS

STATE OF OKLAHOMA)
) SS
 COUNTY OF TULSA)

Before me, the undersigned, a Notary Public in and for said County and State on this 26th day of July, 1950, personally appeared J. E. ROYK, to me known to be the identical person who subscribed the name of the maker thereof (STANOLIND OIL AND GAS COMPANY) to the foregoing instrument as its Vice President and acknowledged to me that he executed the same as his free and voluntary act and deed and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

Given under my hand and seal of office the day and year last above written.

/s/ MARJORIE T. WELCH
 Notary Public

My Commission expires November 30, 1950.

[SEAL]

STATE OF OKLAHOMA)
) SS
 COUNTY OF OKLAHOMA)

Before me, the undersigned, a Notary Public in and for said County and State on this 27th day of July, 1950, personally appeared S. B. IRELAN, to me known to be the identical person who subscribed the name of the maker thereof (CITIES SERVICE GAS COMPANY) to the foregoing instrument as its President and acknowledged to me that he executed the same as his free and voluntary act and deed and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

Given under my hand and seal of office the day and year last above written.

/s/ ROSEMARY BERNEY
 Notary Public

My Commission expires Feb. 25, 1954.

[SEAL]

[fel. 316]

EXHIBIT B TO COMPLAINT

STATE CORPORATION COMMISSION

STATE OF KANSAS

No. 9856

[Emblem]

COMMISSIONERS

JEFF A. ROBERTSON · CHARLES M. WARREN · DE WITT M. STILES

To ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, RAYMOND B. HARVEY,

Secretary of the State Corporation Commission of the State of Kansas, do hereby certify that the following and hereto attached is a true copy of Memorandum Opinion and Order as entered by this Commission on December 2, 1953:

In the matter of the application of certain)
 royalty owners in the Hugoton Gas Field) DOCKET No.
 requesting orders as to a fixed price and) 44,079-C
 measurement regulations in said Hugoton) (C-3216)
 Gas Field.)

the original of which is now on file and a matter of record in this office.

IN TESTIMONY WHEREOF, I hereto set my hand and cause to be affixed the seal of the State Corporation Commission.

Done at the City of Topeka, this 30th day of June A.D. 1954

/s/ RAYMOND B. HARVEY

Secretary, State Corporation Commission.

(SEAL)

wh

[fol. 317]

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the matter of the application of)
certain royalty owners in the) DOCKET No. 44,079 C
Hugoton Gas Field requesting) (C-3216)
orders as to a fixed price and) CONSERVATION
measurement regulations in said) DIVISION
Hugoton Gas Field.)

O R D E R

Now on this 2nd day of December, 1953, the above-entitled matter comes before the Commission for further consideration and final disposition. The Commission, having examined the petition, files and record, and being fully advised in the premises, finds:

1. That the petition herein was filed by the Southwest Kansas Royalty Owners Association, a non-profit corporation, and certain individuals who are the owners of minerals in place or royalty interests in the Hugoton Gas Field, and that it is a petition for a new minimum wellhead price in said field of 14 cents per M.c.f. on a pressure basis of 16.4 pounds per square inch or in the alternative not less than 12 cents per M.c.f. measured on a pressure basis of 14.65 pounds per square inch.

2. That after due notice a public hearing was scheduled at the Allis Hotel, Wichita, Kansas, on September 26, 1952, at which time on motion of certain intervenors the matter was continued to October 20, 1952, in Topeka, and that hearings were held thereon at Topeka on October 20, 21, 22 and 23, 1952, December 15, 16, 17, 18 and 19, 1952, and January 14, 15 and 16, 1953.

[fol. 318] 3. That appearances were entered on behalf of the following: Southwest Kansas Royalty Owners Association and certain individual petitioners by Howard T. Fleeson, Dale M. Stucky, both of Wichita, and A. E. Kraemer, Hugoton, their attorneys; Northern Natural Gas

Company by its attorneys Lawrence I. Shaw, Omaha, Nebraska, and Mark Adams, Wichita; Panhandle Eastern Pipe Line Company by its attorneys Edward H. Lange, Kansas City, Missouri, Louis R. Gates, Kansas City, Kansas, and Mark Adams, Wichita; Cities Service Gas Company by its attorneys O. R. Stites, Sr., and Joe Rolston, both of Oklahoma City, Oklahoma, Mark Adams, Wichita, and O. R. Stites, Jr., of Topeka; Kansas-Nebraska Natural Gas Company by its attorneys James Conway, Hastings, Nebraska, and M. F. Cosgrove, Topeka; Kansas-Colorado Utilities by its attorney Harold Bolton, Abilene. Other appearances include: Consumers Cooperative Association, et al. by their attorney Phillip Dergeance, Lawrence; Lehigh Portland Cement Company by its attorney Frederick G. Apt, of Iola, and R. F. Jones; Coleman Company of Wichita by A. A. Knapp; the Office of Price Stabilization by its attorney Frank Thejs of Arkansas City; the Eastern Kansas Gas Company of Iola, by J. H. Page and John McNally, both of Iola; Kansas Association of Municipal Utilities by its attorney Charles W. Lower, Kansas City, Kansas. That the following attorneys appeared on behalf of cities of Kansas as their respective city attorneys: James W. Wallace, Scott City; C. J. Brenneisen, Kansas City, Kansas; O. C. Jordan, Beloit; Casey Jones, Hill City; Corwin Spencer, Oakley; H. D. Oelschlaeger, Plainville; Max Jones, Goodland; Sam W. G. Lowe, Colby; F. A. Sloan, Hoxie; Charles Stough, Lawrence and Fred [fol. 319] W. Aley, Wichita; that James A. McClure, Robert L. Webb, Ralph W. Oman, all of Topeka, and Jerome M. Joffe of Kansas City, Missouri, [since deceased] appeared, representing a group of protesting cities. Jay Kyle, General Counsel and R. C. Woodward, Special Counsel, appeared for the Commission and the public generally. That the Commission has jurisdiction of the subject-matter and of the parties.

4. That since the public hearings referred to in Finding No. 2, the Commission entered an order on May 20, 1953, in its Docket No. 34,780-C (C-1825) changing the definition of "Gas, Cubic Foot," as defined by Commission Rule 82-2-201 adopted December 24, 1947, and on file with the

Revisor of Statutes pursuant to Laws 1947, Chapter 440. That said order made specific findings relating to the obsolescence of its former rule relating to "Gas, Cubic Foot," which was statewide in its application, and as a result thereof adopted a new definition of "Gas, Cubic Foot," pursuant to its statutory authority (G. S. 1949, Chapter 55, Article 7, as amended). That said definition applies to each and every gas field in the State of Kansas except those wells specifically prohibited from regulation by the proviso in G. S. 1949, 55-703, and applies to all withdrawals of gas in the State of Kansas since July 1, 1953, 12:01 a.m.; said rule as amended is currently on file with the Revisor of Statutes in accordance with G. S. 1949, 77-405 et seq.

5. That in Docket No. 35,154-C (C-1868) on February 18, 1949, the Commission promulgated an Interim Order, in which findings included *inter alia* that in the interest of [fol. 320] conversation the fair and reasonable minimum price of natural gas at the wellhead in the Hugoton Field should be eight cents (8¢) per M.c.f., and that all takers of gas from said field would attribute thereto for purposes of payments to producers, landowners, lease owners and royalty owners, the fair and reasonable minimum price of eight cents (8¢) per M.c.f. at the wellhead until further order of the Commission in the investigation instituted by it in Docket No. C-164.

6. That subsequent to the Interim Order dated February 18, 1949, Kansas-Nebraska Natural Gas Company and Northern Natural Gas Company filed applications for judicial reviews thereof in the District Court of Finney County, Kansas, under the provisions of the Laws of 1945, Chapter 233, Section 9; that likewise, under the same authority, Panhandle Eastern Pipe Line Company brought a similar action in the District Court of Seward County, Kansas; and that Cities Service Gas Company filed a complaint against the Commission in the United States District Court for the District of Kansas, which subsequently was dismissed by that company. The three cases in the state courts were consolidated for hearing before the District Court of Finney County sitting both in the

capacity of Judge of Finney County District Court and Judge pro tem of Seward County District Court. From adverse decisions in the district courts, all three takers of gas (Kansas-Nebraska, Northern and Panhandle) took appeals to the Supreme Court of Kansas, which upheld the district courts and sustained the Commission's authority to establish the minimum wellhead price of eight cents [fol. 321] (8¢) per M.c.f., (*Kansas-Nebraska Natural Gas Co. v. State Corporation Commission*, 169 Kan. 722). The three appellants subsequently filed motions for rehearing which were denied by the Supreme Court, (*Kansas-Nebraska Natural Gas Co. v. State Corporation Com.*, 170 Kan. 341). Following the two Supreme Court decisions just referred to, the Commission, in the Original docket by appropriate order dated February 21, 1951, promulgated an implementing order to its Interim Order and later entered an Order Nunc Pro Tunc on March 8, 1951, in said docket, to correct an error in its order of February 21, 1951. The Commission, at the time it entered its Interim Order of February 19, 1949, wrote a Memorandum Opinion under date of February 23, 1949, which related some of the history of the field, the powers of the Commission and generally the Commission's jurisdiction over the conservation of this irreplaceable natural resource and the production of gas in the Hugoton Field of Kansas. It would be unnecessarily repetitious to set out here the contents of that Memorandum Opinion.

7. That the proceeding in this docket is not a rate matter.

8. The Commission as of this date has entered in this docket a Memorandum Opinion which should be incorporated herein and made a part of this order by reference.

9. That because of the voluminous record and the widespread interest in the subject matter, not only in the interest of conservation and protection of correlative rights but also because of the possible effect the decision herein may have on certain classes of rates to consumers, we [fol. 322] have felt impelled to re-examine the question of a reasonable minimum wellhead price structure in the

Kansas Hugoton Gas Field which is now furnishing gas to more than one-fourth of the states of the Union.

10. It is not disclosed by the record before us that the eight-cent (8¢) price adopted by the Commission through its Interim Order of February 18, 1949, and now in effect, has had any adverse effect upon marketing or marketing conditions in the field or that it has adversely affected ultimate domestic consumer rates. Promulgation of a minimum price is a paramount factor in conservation and the protection of correlative rights. Having a low value in the stages of production, gas can be used uneconomically and wastefully because of the low commercial price being paid at the wellhead. That an important source of gas for the economy of not only Kansas but many other states is the Kansas portion of the Hugoton Gas Field; that gas is not now competitive with other fuels, namely, oil and coal; that the cheapness of gas is conducive to waste as prohibited by statute.

11. That conditions exist which, coupled with known differentials in transportation costs, adversely affect correlative rights.

12. Public records of this Commission clearly indicate that since February, 1948, the number of wells in the field has more than tripled, and that ultimate development of the field is rapidly approaching. All of this leads to the inevitable conclusion that withdrawals from the field are nearing their peak, and also carries the warning that practices of conservation must be heightened if the public is to enjoy the fullest recovery of gas from the Hugoton Field.

[fol. 323] 13. A true stimulant to conservation is price, and a low price is conducive to waste which is specifically prohibited by G. S. 1949, 55-701. Experience in the Hugoton Field since 1949, the year of the first minimum wellhead order, has shown that a floor price in the interest of conservation supports the concept of conservation by economic uses and the avoidance of waste. It is apparent this can be best accomplished through a realistic minimum field price for this precious fuel.

14. Since price is a prime factor in avoiding various types of waste, strengthening that factor strengthens conservation in the Hugoton Field.

15. The minimum price of eight cents (8¢) per M.c.f. at the wellhead adopted by the Interim Order of February 18, 1949, is not now an effective conservation measure for the various reasons amplified in the Memorandum Opinion.

16. That a fair and reasonable minimum wellhead price to be attributed to all gas taken from the field, except gas used for lease operations, is in the public interest and welfare, encourages conservation, furthers the avoidance of discrimination and helps to promote orderly development and exploration.

17. That currently a fair and reasonable minimum price for gas at the wellhead in the Hugoton Field is eleven cents (11¢) per M. c.f. (14.65 pounds p.s.i.a.).

[fol. 324] 18. That all persons, firms or corporations which take gas or cause gas to be taken from the Kansas Hugoton Gas Field on and after January 1, 1954, 12:01 a.m., should be required, as a condition precedent for withdrawal from the common source of supply, to pay or attribute to all gas taken, except gas for the operations of leases, for all purposes including payments to producers, landowners, lease owners and royalty owners, the fair and reasonable minimum price of not less than eleven cents (11¢) per M.c.f. (14.65 pounds p.s.i.a.) at the wellhead.

19. That the petition herein should not be granted on either basis requested.

IT IS, THEREFORE, BY THE COMMISSION ORDERED: That the Memorandum Opinion entered herein this date be, and the same is, hereby incorporated and made a part of this order by reference.

IT IS FURTHER BY THE COMMISSION ORDERED: That the petition herein be, and the same is, hereby denied.

IT IS FURTHER BY THE COMMISSION ORDERED: That all persons, firms or corporations which take gas or cause

gas to be taken from the Hugoton Gas Field in Kansas on and after January 1, 1954, 12:01 a.m., shall, as a condition precedent for withdrawal from the common source of supply, pay or attribute to all gas taken, except gas for the operations of leases, for all purposes including payments to producers, landowners, lease owners and royalty owners, the fair and reasonable minimum price of not less than eleven cents (11¢) per M.c.f. (14.65 pounds p.s.i.a.) at the wellhead until further order or orders of this Commission. [fol. 325] The Commission retains jurisdiction of the subject matter and the parties for the purpose of entering such further order or orders, and promulgating and implementing such further rules and regulations as from time to time it may deem proper.

BY THE COMMISSION IT IS SO ORDERED.

RAYMOND B. HARVEY

Raymond B. Harvey, Secretary

(SEAL)

[fol. 326]

EXHIBIT C TO COMPLAINTS

"55-708. Penalties for violations. That in addition to any penalty that may be imposed by the state corporation commission, any person, firm or corporation, or any officer, agent or employee thereof, violating the provisions of this act, or valid order, rules or regulations of the commission shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine in any sum not exceeding \$500, or by imprisonment in the county jail not exceeding six months, or by both fine and imprisonment. (L. 1935, ch. 213, § 8; July 1.)

"55-709. Injunction and other remedies. That the state corporation commission shall have the right to maintain an action in any court of competent jurisdiction in this state to enforce by injunction, mandatory injunction, and any other appropriate or legal or equitable remedy any valid rule, order, or regulation made by the state corpora-

tion commission or promulgated under the provisions of this act, and said court shall have the authority to make and render such judgments, orders and decrees as may be proper to enforce any such rules, orders, and regulations made and promulgated by the state corporation commission. (L. 1935, ch. 213, § 9; July 1.)

"55-710. Receivership upon violation of act. That in addition to any penalty imposed under the provisions of this act and to the remedy and relief heretofore set forth, any person, firm or corporation violating the provisions of this act, valid order, rules or regulations of the commissions shall be subject to have his or its producing property placed in the hands of a receiver by a court of competent jurisdiction, at the suit of the state of Kansas through the attorney general, but such receivership shall only extend to the operating of producing wells and the marketing of natural gas under the provisions of this act. (L. 1935, ch. 213, § 10; July 1.)"

[fol. 327] [File endorsement omitted]

[fol. 328]

EXHIBIT A TO MOTION OF DEFENDANT FOR STAY OF ACTION

IN THE DISTRICT COURT OF SEWARD COUNTY, KANSAS

No. 7219

PAN AMERICAN PETROLEUM CORPORATION, a corporation,
Plaintiff,

v.

CITIES SERVICE GAS COMPANY, a corporation, Defendant.

PETITION

COMES Now plaintiff and for cause of action against defendant states and alleges:

1. That plaintiff, Pan American Petroleum Corporation, formerly Stanolind Oil and Gas Company, is a corporation duly chartered, organized and existing under and by virtue of the laws of the State of Delaware, and is duly authorized to do business in the State of Kansas.

2. That defendant, Cities Service Gas Company, is a corporation duly chartered, organized and existing under and by virtue of the laws of the State of Delaware, and is duly authorized to do business in the State of Kansas.

3. That on June 23, 1950 plaintiff and defendant entered into a gas purchase contract by the terms of which plaintiff agreed to sell and defendant to buy dry gas produced from oil and gas leases owned by plaintiff covering many thousands of acres of land in the Kansas-Hugoton Gas Field, a true and correct copy of which contract is hereto attached, marked Exhibit "A" and made a part hereof.

4. That under the original terms of said contract, as will more fully appear by reference thereto, the initial well-head price for said gas was 8.4¢ per thousand cubic feet measured at 16.4 pounds per square inch absolute at a temperature of 60 degrees Fahrenheit; that pursuant to said contract, plaintiff commenced the delivery and sale of gas to defendant and plaintiff is now selling and at all times herein mentioned has continued to sell and deliver gas thereunder to defendant.

[fol. 329] 5. That the State Corporation Commission of the State of Kansas issued an order in its Docket No. 44,709-C (C-3216) on December 2, 1953, effective January 1, 1954, prescribing a minimum wellhead price of 11¢ per Mcf measured at 14.65 psia at 60 degrees Fahrenheit; that such Order, from and after its effective date of January 1, 1954, became a part of said June 23, 1950 contract; and that defendant paid plaintiff for all gas delivered under said Exhibit "A", on and after January 1, 1954, at the modified contract price of 11¢ per Mcf measured at 14.65 psia at 60 degrees Fahrenheit.

6. That defendant is and has been, since the enactment thereof in 1938, a natural gas company within the purview

of the Natural Gas Act, 15 U.S.C.A. 117 et seq. and, as such, is and has been at all times involved herein fully familiar and acquainted with the provisions of said Act and the rules, regulations and orders issued thereunder by the Federal Power Commission, the agency designated to administer the provisions of the said Act.

7. That on July 16, 1954 the Federal Power Commission issued an order, designated as Order No. 174, 18 C.F.R. 54, et seq. providing in part as follows:

"The rules and regulations heretofore adopted by the Commission pursuant to Sections 4 and 7 of the Act have been directed principally to interstate pipeline companies. Those producers and gatherers which come within the class found by the United States Supreme Court in the *Phillips* case [*Phillips Petroleum Company v. Wisconsin, et al*, 347 U.S. 672.] to be subject to the Commission's jurisdiction should be afforded a reasonable opportunity to comply with the requirements of the Act to the end that the regulatory objectives of Congress may be achieved within the shortest feasible time. Also, . . . a reasonable cut-off date should be fixed in order to avoid confusion in attempting to readjust past transactions. Therefore, we have determined to provide in the first instance, and subject to our further order, reasonably simple rules and regulations . . . and for making such rules and regulations applicable to transactions and operations conducted on and after June 7, 1954, the date of the Supreme Court decision in the *Phillips Petroleum Company* case. . . ."

8. That a producer and gatherer of gas coming within the class found by the United States Supreme Court in the *Phillips* case to be subject to the jurisdiction of the Federal Power Commission was referred to and defined in Order No. 174 as an "Independent Producer" and said Order required all such producers to file with the Commission "rate schedules", as defined in the Order, setting forth the terms and conditions of each of their field sales of gas as of June [fol. 330] 7, 1954; and further, the Order required all independent producers to file with the Commission applica-

tions for Certificates of Public Convenience and Necessity as required by the Act.

9. That plaintiff is an independent producer as defined in Order No. 174 to the extent that the gas sold by plaintiff to defendant under said Exhibit "A" is transported by defendant across a state line.

10. That on November 16, 1954, plaintiff, as such an independent producer and in compliance with Order No. 174, filed with the Federal Power Commission (a) an application for a Certificate of Public Convenience and Necessity covering its sale to defendant under said June 23, 1950 contract, and (b) as plaintiff's rate schedule for gas sold under the said contract, the contract itself, and the Order of the State Corporation Commission of the State of Kansas modifying the contract price from 8.4¢ per Mcf measured at 16.4 pounds psia at 60 degrees Fahrenheit to 11¢ per Mcf measured at 14.65 psia at 60 degrees Fahrenheit, together with, as required by said Order No. 174, a letter of transmittal and sample billing, both of which stated that the sales price for gas delivered by plaintiff to defendant on and after June 7, 1954 was and would remain 11¢ per Mcf measured at 14.65 psia at 60 degrees Fahrenheit until and unless changed in accordance with the provisions of the Natural Gas Act and the rules and regulations issued thereunder; that a copy of the letter transmitting such rate filing to the Federal Power Commission was mailed and delivered to defendant on November 16, 1954; and that plaintiff complied with all terms of the Natural Gas Act and all of the rules and regulations of the Federal Power Commission in the filing of said application and rate schedule.

11. That defendant, despite its knowledge of plaintiff's said filing of 11¢ per Mcf measured at 14.65 psia as the modified contract price effective on and after June 7, 1954, and despite its knowledge of the Natural Gas Act and of the regulations prescribed thereunder, did not protest said rate filing, as authorized by Section 1.10 of the Rules of Practice and Procedure before the Federal Power Commission, 18 C.F.R. 11; that defendant, pursuant to such

Rules of Practice and Procedure, did object to and protest against an identical rate filing of another independent producer.

[fol. 331] 12. That on March 2, 1955 the Federal Power Commission issued an Order accepting plaintiff's said rate filing of 11¢ per Mef at 14.65 psia as properly filed under Order No. 174 and as the rate properly applicable to all gas delivered by plaintiff to defendant under said Exhibit "A" from and after the June 7, 1954 cut-off date established by said Order No. 174; that the March 2, 1955 Federal Power Commission Order further recognized that the said rate of 11¢ per Mef at 14.65 psia would continue to remain applicable to gas delivered under Exhibit "A" until and unless changed as provided by the Natural Gas Act and the rules and regulations issued thereunder; that defendant, with full knowledge of the existence of said Order, took no action whatever and specifically failed, neglected and refused to apply for a rehearing on said Order as provided in Section 19 (a) of the Natural Gas Act with which defendant was fully familiar; and that, to the contrary, defendant then voluntarily paid and continued voluntarily to pay plaintiff the said filed rate of 11¢ per Mef at 14.65 psia for all gas delivered by plaintiff to defendant under said Exhibit "A" from and after the June 7, 1954 cut-off date established by Order No. 174.

13. That on March 22, 1954 defendant filed with the Federal Power Commission a notice advising the Commission and the Public that it was, 30 days thereafter, increasing all of its gas rates substantially; that within said 30-day period the Federal Power Commission suspended said proposed increases for a period of five months in accordance with the Natural Gas Act, and instituted in its Docket No. G-2410 a proceeding to determine the reasonableness of said increased rates; that, after the expiration of said suspension period, defendant commenced to collect and did collect said increased rates; that in support of said increased rates defendant relied upon said price of 11¢ per Mef at 14.65 psia as being the modified contract price applicable under Exhibit "A", and in a hearing held in said proceeding, on or about January 31, 1955, admitted that

the contract price under Exhibit "A" had been increased and that the contract had been amended to a price of 11¢ per Mcf at 14.65 psia; and that defendant had agreed with plaintiff to pay said price under said contract.

14. That Cities Service Oil Company, an affiliate of defendant, and defendant itself, by and through its wholly [fol. 332] owned subsidiary, Cities Service Gas Producing Company, both of which are and were at all times involved herein, independent producers of gas, subject to the Natural Gas Act, and to the rules and regulations prescribed thereunder, filed late in 1954 the Oklahoma minimum price of 9.8262¢ per Mcf at 14.65 psia, and the said Kansas minimum price of 11¢ per Mcf at 14.65 psia, as the respective cases may be, with the Federal Power Commission, as the respective prices, effective on and after June 7, 1954 under at least 15 separate and distinct gas sales contracts in which they appeared as seller; that said filings were made with the full knowledge, consent and approval of defendant; that said filings were accepted by the Federal Power Commission, the same as plaintiff's said filing; and that said subsidiary and affiliate were paid by the purchasers under said contracts said prices so filed as the effective contract prices.

15. That on July 1, 1957 plaintiff filed with the Federal Power Commission a notice that, effective that date, the price applicable under Exhibit "A" would increase from 11¢ to 11.0715¢ per Mcf at 14.65 psia, in conformity with the tax reimbursement clause thereof on account of G. S. 1957 Supp. 79-4201; that on June 28, 1957 plaintiff notified defendant of the contemplated filing of said change in rate, as required by subsection (f) of section 154.94, 18 C.F.R. 57, of the regulations prescribed under the Natural Gas Act; that, having full knowledge of said filing of a modified contract price of 11.0715¢ per Mcf at 14.65 psia, defendant again failed and neglected to file with the Federal Power Commission a protest or objection against said filing within the time allowed therefor by the Natural Gas Act, and the rules and regulations prescribed thereunder, and that, as a consequence of defendant's said failure, the Federal Power Commission, by Order dated August 19, 1957, accepted said rate filing and made said price of 11.0715¢ per

Mcf at 14.65 psia effective as of July 1, 1957, all of which was and is well known to defendant.

16. That for all gas delivered under Exhibit "A" from July 1, 1957 to and including November 23, 1957, defendant voluntarily paid plaintiff 11.0715¢ per Mcf at 14.65 psia as the modified contract price; that defendant actively urged other independent producers, who had failed to file with the Federal Power Commission by July 1, 1957, to file notices of increases in the prices applicable under their respective contracts with defendant on account of the tax reimbursement clauses thereof, because, as defendant stated to them, all prior tax reimbursement filings by other producers, including plaintiff, had been permitted to become effective by the Federal Power Commission; that, prompted by defendant's urging, said independent producers thereupon filed for said tax reimbursement price increases, which said filings were duly permitted to become effective by said Commission, and defendant thereupon paid such producers the increased contract prices resulting from their tax reimbursement filings; that plaintiff paid the State of Kansas, on the basis of 11¢ per Mcf at 14.65 psia, said oil and gas severance tax pursuant to the terms of G. S. 1957 Supp. 79-4201, et seq., until said oil and gas severance tax was declared unconstitutional by the Supreme Court of the State of Kansas in December, 1957; that defendant has demanded from plaintiff payment of that portion of the severance tax so paid the State of Kansas for which defendant reimbursed plaintiff as aforesaid; that said tax reimbursement clause in Exhibit "A" entitles plaintiff only to be reimbursed thereunder for taxes actually paid by plaintiff; and that, because plaintiff is not now paying said tax, plaintiff does not contend that it is entitled thereto under said contract.

17. That payments of 11¢ per Mcf at 14.65 psia, as heretofore alleged, were all voluntarily made by defendant to plaintiff to and including November 23, 1957 (Defendant voluntarily paid 11.0715¢ per Mcf at 14.65 psia during the period of time mentioned in paragraph 16 hereof.), but for all gas produced from and after November 24, 1957 defendant has tendered to plaintiff payment at the rate of 8.4¢

per Mcf at 16.4 psia at 60 degrees temperature; that on January 29, 1958 defendant demanded payment from plaintiff for the difference between the payments defendant had made for gas delivered to it under said contract during the period commencing January 1, 1954 and terminating November 23, 1957, both inclusive, and the payments which it would have made for such gas had it paid at the rate of 8.4¢ per Mcf at 16.4 psia, including interest thereon at six percent per annum from the respective dates of such payments, which demand has been refused by plaintiff.

18. That under Exhibit "A" all gas produced from the leases therein described was dedicated to be delivered and sold to defendant under said Exhibit "A"; that plaintiff assigned, subject to the terms of said Exhibit "A", a number [fol. 334] of said leases to third parties, there being some 125 persons owning working interests in said assigned leases, and who reside in several states other than Kansas; that said assignees drilled gas wells on the assigned acreage which wells were attached to defendant's gathering system; that plaintiff owns no interest in said leases so assigned, save and except only small overriding royalty interests or small retained working interests; that, defendant was notified of the acreage assigned and the names of each assignee as and when each lease was so assigned by plaintiff; that as an accommodation to defendant, and as provided in Exhibit "A", the proceeds of the sale of the gas by assignees from such farmed-out acreage was paid by defendant to plaintiff, and plaintiff in turn forthwith paid the proceeds so received to the owners thereof, all of which was well known to defendant; that defendant paid for said gas 11¢ per Mcf at 14.65 psia, the same as it paid plaintiff for gas from plaintiff's own leases as hereinabove alleged; that despite the fact defendant knew plaintiff was only a collection agent for said money, defendant has demanded payment from plaintiff of the monies belonging to and paid said farm-out lease owners; that defendant is threatening suit against plaintiff for the difference in price between 8.4¢ per Mcf at 16.4 psia and 11¢ per Mcf at 14.65 psia including the sums transmitted to said farm-out lessees, which suit may be filed in a state other than Kansas, in which state

the court would have no jurisdiction of such farm-out lease owners.

19. That plaintiff at all times herein mentioned has performed and is now performing each and all of its obligations to sell and deliver said gas to defendant under Exhibit "A"; that plaintiff has not refused to deliver or threatened to cease the delivery of gas to defendant under Exhibit "A", either before or after January 1, 1954, the effective date of said 11¢ order; that plaintiff was on and after June 7, 1954, prohibited by Section 7(b) of the Natural Gas Act from discontinuing deliveries of gas under Exhibit "A" without first obtaining the approval of the Federal Power Commission; and that no such approval has been requested or obtained by plaintiff.

20. That all of plaintiff's leases from which gas was sold under said Exhibit "A" provide a landowner's royalty of not less than $\frac{1}{8}$ of the proceeds received from the sale of raw gas as such at the wellhead, and plaintiff at all times herein involved, except from and after November 24, 1957, [fol. 335] paid said lessors royalties on raw gas on the basis of 11¢ per Mcf at 14.65 psia, all of which was known to defendant.

21. That plaintiff, relying on said 11¢ price, expended great sums of money drilling new wells, on lands previously dedicated under Exhibit "A" to be attached to defendant's gathering system, and reworking wells previously connected to said gathering system in order to increase the production of gas therefrom, which new drilling and reworking operations would not have been undertaken by plaintiff except for said 11¢ price, all of which was well known to defendant.

22. That, under the law of the State of Kansas, defendant, by virtue of the foregoing facts, acts, agreements, omissions and conduct, has modified and consented to the modification of said contract to the extent of substituting 11¢ per Mcf at 14.65 psia as the price applicable thereunder to gas delivered prior to June 23, 1961, in lieu of 8.4¢ per Mcf at 16.4 psia; and that by reason thereof said contract was modified by defendant's acquiescence as so alleged and

defendant is estopped to contend that said contract was not so modified.

23. That by reason of the foregoing an actual controversy exists between plaintiff and defendant and unless an adjudication of the rights of the parties is made by the court at this time a multitude of suits will be filed, and disastrous results and extensive litigation will result to both plaintiff and defendant.

WHEREFORE, plaintiff prays the court to interpret said contract and adjudicate the rights of the parties under the foregoing facts, and render a declaratory judgment as to such rights and obligations, and also render such judgment for costs as may be equitable and just.

W. W. Heard
John E. Jones
George C. Spradling
ATTORNEYS FOR PLAINTIFF

Filed: June 4, 1958.

[fol. 336]

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY
Civil Action No. 722—1958

CITIES SERVICE GAS COMPANY, a corporation, Plaintiff,

v.

PAN AMERICAN PETROLEUM CORPORATION, a corporation,
Defendant.

MOTION BY PLAINTIFF FOR SUMMARY JUDGMENT AND AFFIDAVITS AND EXHIBITS IN SUPPORT THEREOF—Filed February 18, 1959

Plaintiff, Cities Service Gas Company, a corporation, respectfully moves the Court, pursuant to Rule 56 of the

Rules of the Superior Court (Civil) of the State of Delaware, to enter a summary judgment for plaintiff and against defendant, for the relief demanded by plaintiff in its complaint, upon the ground and for the reason that there is no genuine issue as to any material fact in this cause and that plaintiff is entitled to judgment, as a matter of law, as appears from the pleadings and admissions on file herein, and the affidavits and exhibits of plaintiff attached hereto and made a part hereof. In support of its motion for summary judgment the following affidavits and exhibits are attached hereto, incorporated herein, and made a part hereof:

Exhibit 1—A true and correct copy of the Petition filed by defendant in Cause No. 7219, styled Pan American Petroleum Corporation, a corporation, Plaintiff, v. Cities Service Gas Company, a corporation, Defendant, in the District Court of Seward County, Kansas, the same being Exhibit A to defendant's Motion for Stay of Action filed herein.

Exhibit 2—A true, correct and authenticated copy of the Order made and entered by the State Corporation Commission of the State of Kansas on December 2, 1953, in Docket No. 44,709-C.

Exhibit 3—A true and correct copy of Pan American Petroleum Corporation's F.P.C. Gas Rate Schedule No. 84 between such company and Cities Service Gas Company, duly certified to on December 5, 1958, by the Records Officer of the Federal Power Commission.

[fol. 337] Exhibit 4—A true and correct copy of an "Order Approving Proposed Settlement and Requiring Tariff Revisions to be Filed and Terminating Proceedings" issued by the Federal Power Commission on May 25, 1956, in the Matter of Cities Service Gas Company, Docket Nos. G-2410 and G-9468, on file with such Commission and duly certified by the Records Officer of such Commission on November 17, 1958.

Exhibit 5—A true and correct copy of a Notice dated February 19, 1954, given by Stanolind Oil and Gas Com-

pany to: All persons receiving gas settlements for Kansas-Hugoton production from or through Stanolind Oil and Gas Company, a copy of the same having been filed with the Federal Power Commission and the attached copy being duly certified to by the Secretary of such Commission on February, 1959.

Exhibit 6—A true and correct copy of a letter from Stanolind Oil and Gas Company to the Federal Power Commission dated November 15, 1954 and duly certified to by the Records Officer of such Commission on December 4, 1958.

Exhibit 6A—A true and correct copy of a letter of transmittal from Stanolind Oil and Gas Company to the Federal Power Commission dated November 15, 1954 and duly certified to by the Records Officer of such Commission on December 4, 1958.

Exhibit 7—A true and correct copy of a letter from the Federal Power Commission to Stanolind Oil and Gas Company dated March 2, 1955, duly certified to by the Records Officer of such Commission on December 4, 1958.

Exhibit 8—Affidavit of W. R. Morton relating to certain voucher checks issued by plaintiff to defendant during the period January 1, 1954 through November 22, 1957.

Exhibit 9—A true and correct copy of a voucher check issued by plaintiff to defendant, dated February 25, 1954, attached to and made a part of the affidavit of W. R. Morton.

Exhibit 10—The Affidavit of Russel W. Hofsess relating to correspondence between plaintiff and defendant and of defendant in plaintiff's files.

[fol. 338] Exhibit 11A—A true and correct copy of a letter dated January 21, 1954, from plaintiff to defendant relating to the Kansas Minimum Price Order, which letter is attached to and made a part of the Affidavit of Russel W. Hofsess.

Exhibit 11B—A true and correct copy of a letter dated January 27, 1954, from defendant to plaintiff relating to the Kansas Minimum Price Order, which letter is attached to and made a part of the Affidavit of Russel W. Hofsess.

Exhibit 12—A true and correct copy of a Gas Purchase Contract entered into on June 23, 1950; between plaintiff and defendant. Such contract is the same as Exhibit A to plaintiff's petition filed in the District Court of Seward County, Kansas.

Respectfully submitted,

John J. Morris, Jr., Howard L. Williams, Of Morris,
James, Hitchens & Williams, Attorneys for Plain-
tiff, 701 Bank of Delaware Building, Wilmington,
Delaware.

Conrad C. Mount, O. R. Stites, Gordon J. Quilter, Of
Counsel, c/o Cities Service Gas Company, First National
Building, Oklahoma City, Oklahoma.

Acknowledgment of service (omitted in printing).

[fol. 339]

EXHIBIT 3 TO MOTION BY PLAINTIFF FOR
SUMMARY JUDGMENT

UNITED STATES OF AMERICA

FEDERAL POWER COMMISSION

CERTIFICATION

I hereby certify that the attached two hundred and fourteen (214) pages are true copies of Pan American Petroleum Corporation's FPC Rate Schedule No. 84, filed November 16, 1954 on file with this Commission.

This 5th day of December, 1958.

/s/ CHARLES C. BENNINGTON
Name
Title Records Officer

(SEAL)

I hereby certify that

Name Charles C. Bennington

Title Records Officer

whose signature appears above, is official custodian of the records of the Federal Power Commission to which certification is made and was such official custodian at the time of executing the above certification.

/s/ J. H. GUTRIDE
Secretary

[fol. 340]

RECEIVED
FEB 19 4 58 PM '57
FEDERAL POWER COMMISSION
Official File Copy

LAW OFFICES
DOW, LOHNES AND ALBERTSON
MUNSEY BUILDING
WASHINGTON 4, D. C.

TELEPHONE
STERLING 3-1000
CABLE "DOWLOHNES"

February 19, 1957

Honorable Joseph H. Gutride
Secretary
Federal Power Commission
Washington 25, D. C.

Re: Change in Name of Stanolind Oil and
Gas Company to Pan American Petroleum
Corporation

Dear Mr. Gutride:

On behalf of Pan American Petroleum Corporation
(formerly Stanolind Oil and Gas Company), this letter is

written to you requesting a change in the designation of certain certificates, applications for certificates and rate filings heretofore made with your Commission.

As you are no doubt aware, on February 1, 1957, the name of "Stanolind Oil and Gas Company" was changed to "Pan American Petroleum Corporation" by appropriate corporate action taken pursuant to the laws of the State of Delaware in which State said company is incorporated. Both before and since the change in name, the fact of such change has been the subject of conversations between us and members of the Commission's Staff, and this letter being written in accordance with suggestions received from the Staff in the matter.

It is to be understood that the only thing which occurred on February 1, 1957 was the change in name and that no other alteration or change was made in the company, its properties or its operations. It is particularly to be noted that this action was not inter-related with, nor is a part of a corporate action taken earlier by which a former corporation known as Pan American Production Company was merged into and with Stanolind Oil and Gas Company. The details of that transaction are properly before the Commission in its Docket No. G-11405, and they are in no way related to the request hereinafter contained.

[fol. 341] On behalf of Pan American Petroleum Corporation, it is respectfully requested that each and every Certificate of Public Convenience and Necessity which has heretofore been granted to Stanolind Oil and Gas Company be amended and re-designated to show that the grantee of said certificate is the Pan American Petroleum Corporation in lieu of Stanolind Oil and Gas Company as originally issued.

It is further requested that with respect to each and every of the several applications for Certificates of Public Convenience and Necessity which have heretofore been filed by Stanolind Oil and Gas Company, and which have not yet been acted upon by the Commission, be amended to change the name of the applicant from Stanolind Oil

and Gas Company to Pan American Petroleum Corporation.

It is further respectfully requested that with respect to each and every rate filing heretofore made by Stanolind Oil and Gas Company in its name, as such, be re-designated as being the filing of Pan American Petroleum Corporation.

We believe that the foregoing, when accomplished, will properly and adequately take care of the entire matter, and that the records of the Commission will then completely and correctly reflect the true situation with respect to the several certificates, applications for certificates and rate filings above referred to.

Yours very truly,

/s/ RICHARD B M ENTISE

[fol. 342]

STATEMENT OF REDESIGNATION OF RATE SCHEDULE

This rate schedule has been redesignated from STANOLIND OIL AND GAS COMPANY FPC Gas Rate Schedule No. 84, and Supplement Nos. 1 through 79, thereto, to PAN AMERICAN PETROLEUM CORPORATION FPC Gas Rate Schedule No. 84, and Supplement Nos. 1 through 79, thereto.

[fol. 343]

FPC GAS RATE
 SCHEDULE No. 84
 FILING DATE Nov 16 1954
 EFFECTIVE DATE Accepted
 (Illegible) File Copy
 Stanolind Oil and Gas Company
 18196

RECEIVED
 Nov 16 5 07 AM '54
 FEDERAL POWER COMMISSION

 GAS PURCHASE CONTRACT
 between
 STANOLIND OIL AND GAS COMPANY
 (Seller)
 and
 CITIES SERVICE GAS COMPANY
 (Buyer)
 Hugoton Field, Kansas

[fol. 344]

RECEIVED
 Nov 16 5 07 AM '54
 FEDERAL POWER COMMISSION
 18196

 GAS PURCHASE CONTRACT

THIS AGREEMENT, made and entered into as of the 23rd day of June, 1950, by and between STANOLIND OIL AND GAS COMPANY, a Delaware corporation, hereinafter referred to as "Seller", and CITIES SERVICE GAS COMPANY, a Delaware corporation, hereinafter referred to as "Buyer";

WITNESSETH: That

WHEREAS, heretofore under date of June 13, 1946, Seller and Buyer entered into a Gas Purchase Contract providing

for the sale and purchase of natural gas produced or to be produced from certain lands in the Kansas-Hugoton Field, said lands being set out and designated as Area "A" on the plat attached hereto, marked Exhibit "A", and made a part hereof, which said Gas Purchase Contract was amended by letter agreements dated, respectively, June 13, 1946, December 9, 1946, July 31, 1947, June 18, 1948, and December 9, 1948, and by that certain Amendment to Gas Purchase Contract dated March 8, 1950; and

WHEREAS, Seller owns oil and gas leases covering approximately four hundred thousand (400,000) acres of land in the Kansas-Hugoton Field in addition to the lands covered by the said Contract of June 13, 1946; as amended, said additional lands being set out and designated as Areas "B" and "C" on the said plat marked Exhibit "A" which such Exhibit "A" shall be supplemented within six (6) months from the date hereof by a complete tabulation of Seller's interest in all of the lands and leases covered by said Exhibit "A"; and

WHEREAS, Buyer, in order to meet the demands of its expanding market, desires to obtain substantial quantities of gas in addition to the quantities of gas produced or to be produced by Seller from the lands covered by the said Contract of June 13, 1946, as amended, so that Buyer will have supplies of merchantable natural gas ample to meet, insofar as prudently possible at all times and over a long period of time, the demands of its customers at the various times [fol. 345] such demands occur in its widely distributed markets; and

WHEREAS, Seller desires to sell all of its merchantable natural gas produced or to be produced from gas wells only from producing zones at depths above sea level from said additional lands and is willing to sell all of such natural gas to Buyer upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual covenants hereof and of the dedication by Seller of additional gas reserves to Buyer's requirements, it is hereby mutually

stipulated and agreed by and between the parties hereto as follows, to wit:

ARTICLE I

Supersedure

Upon execution of this agreement by both Seller and Buyer, the Gas Purchase Contract between the said parties dated June 13, 1946, as amended, above referred to, shall effective as of 7:00 o'clock a.m. Central Standard Time, June 23, 1950, be superseded by this agreement and shall be of no further force and effect from and after said time and date.

ARTICLE II

Definitions

As used in this agreement, the following terms, words, and phrases shall have the following meanings:

1. *Dedicated Reserves* shall mean Seller's gas rights in and to the gas producing zones at depths above sea level covered by lands and leases set out as Areas "A", "B", and "C" on the plat attached hereto and marked Exhibit "A".

2. *Natural Gas* or *Gas* shall mean gas produced from gas wells only from producing zones at depths above sea level, and does not include gas produced from zones from any other depth or gas produced from oil producing formations in conjunction with the production of oil.

3. *Deliverability* shall mean that quantum of measurement of the productive capacity of a well as defined by the rules, regulations, and order of the State Corporation Commission of Kansas as now determined or hereafter [fol. 346] fixed, and in the event and whenever such deliverability shall cease to or not be defined by the State Corporation Commission of Kansas or some other State or Federal regulatory body having lawful jurisdiction and authority, then by such reasonable determination as the parties may agree upon, or, failing therein, a fair standard for the determination of the ability of the various wells in

the Kansas-Hugoton Field to produce gas against a reasonable percentage of the average seventy-two (72) hour shut-in pressure of all the wells in the Kansas portion of said Field.

4. A *Commercial Well* shall mean any well having an initial deliverability of at least 100 MCF of gas per day having an average gross heating value of not less than 700 BTU's per cubic foot.

5. The term "average gross heating value" shall mean the number of BTU's produced by combustion at constant pressure of the amount of gas saturated with water vapor which would occupy a volume of one cubic foot at a temperature of sixty degrees Fahrenheit (60° F.) and under a pressure equivalent to that of thirty (30) inches of mercury at thirty-two degrees Fahrenheit (32° F.) and under the standard gravitational force (the acceleration 980.665 c.m. per sec. per sec.), with air of the same temperature and pressure as the gas when products of combustion are cooled to the initial temperature of gas and air and when the water formed by combustion is condensed to the liquid state.

6. *Fiscal Accounting Month* shall mean that period of time extending from the 23rd day of each calendar month to the 22nd day, inclusive, of the next succeeding calendar month.

ARTICLE III

Seller's Reservations

Seller hereby expressly reserves and excepts from the terms of this agreement such quantities of gas produced from the acreage described on Exhibit "A" as may at all times and from time to time be required by Seller in its sole opinion and discretion as a prudent operator for the following purposes:

1. Fuel when required to drill oil or gas wells on such acreage or on Seller's adjacent acreage and for all other operation requirements incident thereto;

[fol. 347] 2. Fuel when required for use in internal combustion engines employed in lifting oil to the surface of the ground from any oil well hereafter drilled on such acreage;

3. Fuel for stoves and inside lights in the principal dwelling located on the leaseholds covering such acreage, to the extent required by the present oil and gas leases on such acreage and to supply gas required under right-of-way and similar agreements.

4. Fuel for irrigation purposes to the extent reasonably required by Seller in the operation of its oil and gas properties.

Seller hereby expressly reserves and excepts from the terms of this agreement all of the liquid and liquefiable hydrocarbons contained in the gas produced from said Areas "A" and "B" specified on Exhibit "A" and removed from said gas by Seller under the same terms and conditions as set out in that certain Processing Agreement between the parties hereto dated June 23, 1950, in its Stano gasoline plant located in Section 5, Township 29 South, Range 38 West, Grant County, Kansas, as the same may exist from time to time.

The obligations of Seller hereunder are subject to the ability of Seller's wells to produce without waste and in accordance with prudent gas field practice. The control and operation of Seller's land and leaseholds producing gas sold to Buyer hereunder shall be and remain the exclusive right of Seller.

ARTICLE IV

Dedication

1. Subject to Seller's reservations and subject to the right of substitution, withdrawal, surrender, and disposal of acreage and gas rights under the terms and limitations of this agreement, Seller hereby dedicates to the fulfillment and performance of this agreement all of the dedicated reserves, together with all commercial gas wells drilled thereon as herein contemplated, and Seller agrees and covenants to maintain, at its own cost and expense, the dedicated reserves and substitutions therefor in full force and effect until such dedicated reserves are either per-[fol. 348] petuated by production of gas wells drilled on

such acreage or released from dedication as herein provided, or until such lands and leases or portions thereof are proven unproductive of gas in commercial quantities, or until such leases or portions thereof have been tendered to Buyer as herein provided.

2. Seller shall have the right from time to time during the term of this agreement to substitute acreage of equal value and extent for a like amount of acreage described and included in Exhibit "A" (or acreage substituted therefor) upon the following conditions:

(a) Seller shall first obtain the written approval of Buyer to such substitution, and Buyer agrees that it will not capriciously or unreasonably withhold its approval, except that Seller shall have the right without the consent of Buyer to exchange or trade acreage dedicated hereunder with any acreage in the Kansas Hugoton Field dedicated to the same market to which Buyer is selling gas. Seller immediately shall notify Buyer of any such exchange or trade.

(b) Any acreage so substituted shall upon substitution immediately be dedicated in the same manner and to the same extent theretofore attaching to the acreage described in Exhibit "A" (or acreage substituted therefor) for which other substitution is made.

(c) Seller shall prepare and forward to Buyer for execution a written release in recordable form, which Buyer will execute and acknowledge, which by its terms shall release from the dedication the acreage specified in Exhibit "A" (or acreage substituted therefor) for which other acreage has been substituted.

(d) Seller shall have the right, without the consent of Buyer, to rearrange and adjust acreage comprising its existing and future production units in order to comply with existing and future orders of the State Corporation Commission of Kansas, including the right to exchange acreage for such purposes, and in such event Seller shall immediately notify Buyer of such action.

[fol. 349] 3. Seller agrees that it shall endeavor in good faith to keep and maintain all of its leases on said lands covered by Exhibit "A" in full force and effect. If at any time Seller deems any of its leases or any part thereof to be condemned and no longer of any value or undesirable for it to keep or develop, it shall tender to Buyer, at least sixty (60) days prior to the expiration date of any such lease, an assignment of such lease or leases or portions thereof which Seller wishes to surrender. If Buyer fails to accept such assignment within thirty (30) days after the date of tender thereof, then Seller may at its option release and surrender or otherwise dispose of such lease or portions thereof. If Buyer accepts such assignment of any lease or portion thereof upon which there is a gas well, Buyer shall pay to Seller the reasonable salvage value of the well and the casing and equipment therein and thereon and used in connection therewith.

ARTICLE V

Sale and Purchase

1. Subject to and in accordance with the terms of this agreement, Seller agrees to sell and deliver to Buyer and Buyer agrees to purchase and receive all gas produced from the dedicated reserves and acreage substituted therefor as hereinabove provided. It is understood that said Exhibit "A" indicates lands and leases in which Seller owns either the entire gas rights or only a partial interest therein, and in this connection it is agreed by Seller and Buyer that Seller is only selling and Buyer is only purchasing the gas produced from such acreage which is attributable to Seller's interest therein, whatever that interest may be. Seller shall deliver gas hereunder to Buyer in such volumes and at such times as requested by Buyer up to the delivery capacity of the wells of Seller located on the acreage specified in Exhibit "A", provided, however, that Seller shall not be required to operate its wells in a manner not conforming to usual good practice in the industry.

2. Subject to the ability of Seller's wells to produce without waste in accordance with good gas field practice and to

the requirements relating to quality as set forth in Article XI hereof, Buyer agrees that, with respect to and within [fol. 350] the limits of its markets to which Buyer shall deliver gas purchased hereunder and subject to paragraph 3 of this Article V it shall, insofar as possible, purchase and take from each well covered hereby natural gas ratably with its takes of natural gas from all other wells in the Kansas-Hugoton Field for such markets or, if it is not possible so to do, then in any event Buyer shall purchase and take from the acreage covered hereby an aggregate quantity of natural gas ratably with its takes of natural gas from all other acreage in the Kansas-Hugoton Field for such markets. It is recognized and agreed that in taking natural gas ratably Buyer will be unable, due to varying operating conditions, to withdraw natural gas in exact ratable proportions during any specific month, but Buyer agrees that to the best of its ability it will maintain said ratable purchases hereunder by balancing excesses against deficiencies during each twelve (12) months period ending January 22. If during the year preceding any January 22 Buyer has taken less or more than Seller's ratable share of Buyer's market, and within twelve (12) months thereafter has been unable to bring such ratable takes in balance, then Buyer shall pay Seller for deficiencies in takes within thirty (30) days thereafter. "Ratably" or "Ratable" as used herein means in proportion to well allowables lawfully fixed and determined by the State Corporation Commission of Kansas, and if well allowables shall cease to be fixed and determined by said Commission or other regulatory body having jurisdiction thereover, then in proportion to the deliverability of the wells and the acreage attributable thereto from which Buyer shall be producing or purchasing gas in the Kansas-Hugoton Field for the same market.

3. Buyer shall construct and shall at all times maintain a gathering system, complete with pipe lines and compression equipment, in conformity with general practice of other gatherers in the Hugoton Field, however, in the event and whenever the quantities of gas which Buyer is obligated to take from Seller under Section 2 hereof shall not be sufficient with respect to any lease on acreage covered here-

by to (1) prevent drainage of the same by wells of others or (2) prevent loss of such lease by Seller, then within thirty (30) days after written notice by Seller to Buyer of either of such facts, Buyer shall commence taking gas from the [fol. 351] well or wells located on such lease acreage in sufficient quantities to prevent such drainage or loss of such lease if such well or wells are able to deliver such quantities of gas into Buyer's facilities, or, if such well or wells are only able to deliver at pressures appreciably less than offset wells and therefore are not so able to deliver into Buyer's facilities, Buyer shall so long as such condition exists take such measures as may be necessary to prevent loss or forfeiture of such lease by Seller. Nothing in this paragraph 3 shall operate to increase Buyer's obligation to take an aggregate quantity as provided in paragraph 2 of this Article V.

4. So far as practicable, Seller shall deliver to Buyer and Buyer shall take gas hereunder continuously, having due regard for the seasonal variation in the receipts of all gas by Buyer for the same market. Buyer agrees to notify Seller of any substantial increase in its daily requirements, and Seller agrees to notify promptly the designated agent for Buyer, or such other agent as may be agreed upon between the parties, of any interruptions affecting the delivery of gas hereunder, and also in order to meet current fluctuations in the requirements of Buyer, Seller shall begin, increase, decrease, or suspend the delivery of gas hereunder on the telephonic orders of such designated agent or such other agent.

ARTICLE VI

Development and Connection

1. At the date of this agreement the acreage specified as Areas "A", "B", and "C" has not been fully developed for the production of gas. It is recognized by the parties hereto that Buyer's markets must be further developed and expanded in order to enable Buyer to absorb the additional quantities of gas purchased by it hereunder and that Seller

must drill and complete additional wells on the acreage dedicated hereunder in order to supply such gas to Buyer. In this connection it is agreed by the parties hereto that, to the best of their abilities and to the greatest extent practicable in accordance with prudent operations, the rate of development of such acreage shall be commensurate with the rate of development and expansion of Buyer's market. [fol. 352] To this end Seller and Buyer agree to use due diligence in complying with the respective obligations imposed upon them by the provisions of this Article VI, but it is agreed that if either party is unable to comply with its said obligations because of inability due to force majeure to obtain pipe or other material and equipment necessary for its compliance with any such obligation within the performance period applicable thereto, then such period shall be extended until the necessary pipe or other material and equipment can be obtained and the required construction of facilities or drilling can be completed. Nothing in this paragraph shall be construed as in any way limiting or restricting the scope or applicability of Article XVI (Force Majeure) of this agreement.

On and after the date of this agreement, Buyer shall connect to all commercial wells drilled by Seller in said Area "A" as provided in paragraph 2(a) of this Article VI.

From the date of this agreement until January 1, 1956, for said Areas "B" and "C" it is anticipated that the gathering system expenditure schedule as set out in the table below is adequate to meet the estimated development schedule also set out in the table below in order to permit connection by Buyer to the wells so drilled as selected by Seller; however, if the expenditure schedule is inadequate to connect all wells so scheduled, then Seller shall either curtail the development rate or shall designate the order in which such wells shall be connected, and Buyer shall be obligated to connect wells as designated up to but not exceeding the cumulative expenditures by the end of any year set out in the table below.

Year	Estimated Number of Wells Drilled, to be Drilled or Caused to be Drilled by Seller		Cumulative Maximum Direct Expenditure for Gathering System and Well Connections by Buyer by the End of Each Year	
	Area B	Area C	Area B	Area C
1950				
1951	115	37	\$3,291,000	\$2,044,000
1952	44	48	3,636,000	2,625,000
1953	74	69	4,366,000	3,952,000
1954	34	51	4,676,000	4,466,000
1955	8	20	4,774,000	4,672,000
TOTAL	275	225		

[fol. 353] From and after January 1, 1956, Buyer shall connect to all commercial wells drilled by Seller in said Areas "B" and "C".

2. Buyer, subject to the provisions of Section 1 of this Article VI, and Section 3 of Article V, shall connect all commercial wells completed by Seller on the acreage covered hereby to its gathering system and thereafter purchase and pay for the gas produced therefrom under the terms of this agreement so long as such well is capable of producing against at least 50 psig flowing pressure. The time for such connection to be made by Buyer for each well in each of said areas shall be as follows:

(a) Area "A": Within sixty (60) days after the receipt by Buyer of notice by Seller that a commercial well has been completed thereon;

one hundred twenty (120)
(b) Areas "B" and "C": Within ~~sixty (60)~~ days after receipt by Buyer of notice by Seller that a commercial well has been completed thereon or on June 1, 1951, whichever is the later date; provided, however, if at any time prior to June 1, 1951, Seller has a well on a lease which is in danger of forfeiture for lack of market, then Buyer shall within thirty (30) days after receipt of notice from Seller of such fact (i) begin or cause the purchase and receipt of gas from such well, or (ii) take such measures as may be necessary to pre-

S.B.I.
J.E.R.

vent loss or forfeiture of such lease, or (iii) release such well and lease from the terms of this agreement.

If Buyer fails to receive and purchase the gas tendered from any well on the dates required hereunder, Buyer shall nevertheless pay for the quantity of gas which could have been produced and sold to Buyer hereunder if Buyer had commenced taking the gas within the time herein provided. Such payments shall continue until actual deliveries are commenced, and payments made for gas not actually taken shall be considered as damages for Buyer's failure to comply herewith, and Buyer shall not have the right to later receive free of cost any gas to replace the gas so paid for but not taken.

3. If and whenever during the term of this agreement the operation of any well covered hereby shall become unprofitable to Seller, in its sole opinion, Seller shall have [fol. 354] the right to tender an assignment of such well and the acreage allocated thereto to Buyer and if Buyer does not accept such assignment within sixty (60) days after such tender, then Seller shall have the right to abandon such well and thereby release it from the terms of this agreement.

4. It is recognized by the parties hereto that Seller is presently selling gas to other purchasers on the acreage dedicated hereunder from the following gas wells:

Well Designation	Located In	Purchaser	Earliest Contract Termination Date	Notice Required to Terminate
Waechter "H"	6-26-37	Colo. Inter.	3-1-51	6 mos.
Waechter "F"	7-26-37	" "	30 days	30 days
Willets "B"	15-26-38	" "	*10-16-52	One Day
Beymer "B"	7-25-36	" "	4-1-51	6 mos.
Dan	2-25-37	" "	*10-16-52	One Day
Campbell "D"	3-25-37	" "	*10-16-52	One Day
Shell	4-25-37	" "	*10-16-52	One Day
Beymer "A"	12-25-37	" "	4-1-51	6 mos.
Strawn	14-25-37	" "	1-1-51	6 mos.
Tate-Hutton	28-25-37	" "	3-1-51	6 mos.

Well Designation	Located In	Purchaser	Earliest Contract Termination Date	Notice Required to Terminate
J. D. Hillman	27-24-37	" "	90 days	90 days
R. G. Morris	36-23-36	" "	*10-16-52	One Day
Shields	4-25-35	Kans.-Nebraska	Day to day	One Day
White "B"	6-25-36	" "	30 days	30 days
Crawford	7-24-34	" "	30 days	30 days
Martin	14-24-35	" "	30 days	30 days
Cohen	15-24-35	" "	6 mos.	6 mos.
Melton	16-24-35	" "	30 days	30 days
Dodge City	17-24-35	" "	2-8-51	30 days
Bentrup	18-24-35	" "	2-11-51	30 days
Orr	31-24-35	" "	30 days	30 days
Reeve	11-25-33	Northern Nat'l	10 days	10 days

*If not terminated by 10-16-52 will remain committed until 2-14-67.

It is agreed that Seller shall cancel said contracts on the earliest date respectively permitted thereunder after receiving notice from Buyer that it has completed gathering facilities adequate to take the gas produced from the wells covered by said contracts or that Buyer desires to have such contracts canceled. As and when each of said contracts has been canceled by Seller, Buyer shall forthwith connect or arrange for the connection of the wells covered thereby so that an uninterrupted flow of gas from these wells may be maintained. Buyer agrees to use its best efforts to construct and complete its gathering system [fol. 355] or portion thereof at such times as are equivalent to the earliest dates on which each of said contracts may be canceled.

ARTICLE VII

Delivery Point

1. The points of delivery for all gas sold and purchased hereunder shall be at the mouths of the respective wells on the acreage covered hereby.
2. Insofar as Seller is able to convey such rights, Buyer shall have and it is hereby granted an easement and serv-

itude on the acreage covered hereby for installing, operating, and maintaining equipment used in conjunction with the measurement and removal of gas sold and purchased hereunder, shall have the right to operate, inspect, and test such equipment at any time, and shall have free access at all times to any part of Seller's leaseholds for any purpose connected with any matter or thing covered by this agreement.

3. Seller shall be deemed to be in control and possession of the gas deliverable hereunder and responsible for any damage or injury caused thereby until said gas shall have been delivered to Buyer at the delivery points herein provided, after which delivery Buyer shall be deemed to be in exclusive control and possession of the gas and responsible for any injury or damage caused thereby except for the interval during which the gas is being processed by Seller.

ARTICLE VIII

Term

This agreement shall remain in full force and effect from the date hereof for a period of twenty (20) years from said date and as long thereafter as gas shall be produced from the acreage covered hereby in commercial quantities from producing zones above sea level.

ARTICLE IX

Price and Payment

1. Buyer shall pay Seller for all gas purchased by it hereunder the price of 8.4 cents per 1,000 cubic feet until June 23, 1961.

[fol. 356] 2. For all natural gas purchased by Buyer from and after June 22, 1961, the price of such gas shall be the fair and reasonable price for each successive five (5) year period thereafter based on and compared with the price for gas then being paid by other purchasers in the field under similar contracts and conditions, but in no event shall the price be less than 12 cents per 1,000 cubic feet.

3. It is expressly stipulated that the delivery of gas by Seller under this agreement shall not be interrupted because of delay in the determination of the applicable price and the delivery of gas shall continue at the previous effective price. Upon determination of the new price, the price shall be applied retroactively to gas sold during the period when the price was undetermined.

4. If during any fiscal accounting month as herein defined the average gross heating value of the gas delivered by Seller from either the acreage designated as Area "C" on Exhibit "A" or the composite stream from the acreage designated as Areas "A" and "B" on Exhibit "A" shall fall below 900 BTU's per cubic foot, then the price applicable hereunder to be paid by Buyer to Seller for gas delivered during such month from said Area "C" or said Areas "A" and "B" shall be decreased proportionately to the deficiency in gross heating value below 900 BTU's per cubic foot; provided, however, if during any fiscal accounting month, as herein defined, the average gross heating value of the composite stream of the gas delivered by Seller from said Areas "A" and "B" shall fall below 925 BTU's per cubic foot as the result of the processing of such gas by Seller, then the price applicable hereunder to be paid by Buyer to Seller for such gas delivered during such month shall be decreased proportionately to the deficiency in gross heating value below 925 BTU's per cubic foot.

5. Buyer shall render to Seller a statement on the 5th day of each calendar month showing the quantity of gas taken by Buyer hereunder during the next preceding fiscal accounting month. Payment for the quantity of gas reported on such statement shall be made by check delivered to Seller on the 25th day of the same calendar month. Seller may accept such statement and the payment based [fol. 357] thereon, and in the event the same is found incorrect under the provisions hereof, adjustments and payments shall be made accordingly.

ARTICLE X

Measurement

1. The unit of measurement for natural gas sold and purchased hereunder shall be a cubic foot of gas, and the term "cubic foot of gas" wherever used in this agreement shall mean a cubic foot of gas at 16.4 pounds absolute pressure per square inch and at a temperature of sixty degrees (60°) Fahrenheit; provided, however, the unit of measurement for the determination of heating value, hydrogen sulfide content, and sulfur content shall be a cubic foot of gas saturated with water vapor at an absolute pressure of thirty (30) inches of mercury and a temperature of sixty degrees (60°) Fahrenheit.

2. The volume of gas delivered hereunder shall be measured at prevailing meter pressures, and the volume thereof shall be computed on a pressure base of 16.4 pounds per square inch absolute and on a temperature base of sixty degrees (60°) Fahrenheit. It is assumed and agreed that the gas delivered hereunder obeys Boyle's Law and the flowing temperature of the gas in the meter is sixty degrees (60°) Fahrenheit.

The volume shall be computed in accordance with the method prescribed in Gas Measurement Report No. 2, American Gas Association, including the appendix thereto, as published May 6, 1935, or such revisions as may be mutually agreed upon. It is assumed and agreed that the values of the Reynolds number factor and the expansion factor are one. Specific gravity determinations for the purpose of measurement computations shall be made semi-annually at each meter in accordance with an approved method, and these determinations so made shall be used for calculating the volume of gas delivered hereunder.

3. Buyer at its own cost and expense shall install and maintain in accurate repair at the points of delivery hereunder orifice meters of ample size and type and of standard manufacture for the accurate measurement of gas delivered hereunder, and Buyer shall cause said meters to [fol. 358] be read at proper intervals. The meters and respective meter readings and meter charts of Buyer shall

be at all reasonable times accessible to inspection and examination by Seller. The meters shall be calibrated once each month and the orifice plates shall be inspected and calipered at least once each year by and at the expense of Buyer but in the presence of a representative of Seller, if Seller so elects. Reading, calibration, and adjustment of Buyer's meters and changing of charts shall be done only by Buyer, but all data with respect thereto shall at all reasonable times be available to Seller. It is recognized that in some instances it may be impractical to locate said meters at the point of delivery. If in Buyer's opinion it is desirable to locate any meter elsewhere on the lease, then Buyer agrees in such instances to pay Seller for any substantial loss of gas occurring between the point of delivery and such meter.

4. Seller may at its option and expense install and operate check meters to check Buyer's meters, but measurement of gas for the purposes of this agreement shall be by Buyer's meters. Check meters shall be of the orifice type and shall be subject at all reasonable times to inspection or examination by Buyer, but the reading, calibration, and adjustment thereof and changing of charts shall be done only by Seller.

5. If any meter of Buyer's is found to be inoperative or inaccurate, it shall be adjusted to register correctly. The amount of the error shall be determined by the most accurate method found feasible, and if the error is more than two per cent (2%) in the measurement of gas, then the calculated deliveries of gas through such meter shall be adjusted to zero error to compensate for such error. Such adjustment shall be made for such period of inaccuracy as may be definitely known, or if not known, then for one-half the period since the date of the last test.

ARTICLE XI

Quality

1. All gas delivered by Seller to Buyer under the terms of this agreement shall conform to the following specifications:

[fol. 359] (a) The gas shall not contain in excess of one grain of hydrogen sulfide per 100 cubic feet and shall not contain in excess of twenty (20) grains of total sulfur per 100 cubic feet;

(b) The gas shall not contain oxygen in excess of one per cent (1%) by volume;

(c) The gas delivered at each delivery point shall be commercially free from solid matter, dust, gums, and gum forming constituents which might interfere with its merchantability or cause injury to or interfere with the proper operation of the lines, regulators, meters or other appliances through which it flows.

(d) The gas shall be practically free of water, crude oil, impurities and other objectionable substances, and Seller shall use every reasonable effort to keep the gas entirely free from such liquids and objectionable substances, but shall not be required to install and operate dehydration facilities.

Buyer shall have the right at its election to discontinue or curtail purchases of gas which does not conform to the above specifications.

In the event Buyer shall discontinue taking gas from any well by reason of any of the provisions of this Article, and if in Seller's opinion the gas from such well could not be made acceptable to Buyer by diligent effort, Seller shall thereafter have the right to use or sell the gas from any such well to others free of this contract, and upon written request by Seller the well and the acreage allocated thereto shall thereafter be released from the terms of this contract by Buyer.

ARTICLE XII

Taxes

As between the parties hereto, Seller shall bear or be responsible for the payment of all taxes assessed upon or in respect to the gas produced, sold, and delivered hereunder up to the delivery thereof to Buyer, and Buyer shall bear or be responsible for the payment of all taxes assessed

upon or in respect to such gas on and after such delivery, except that Buyer shall pay Seller for 65 per cent of the [fol. 360] amount by which from month to month the total of all excise taxes hereafter levied and assessed with respect to the gas produced, sold, and delivered by Seller to Buyer hereunder exceeds the total of all such taxes now levied and assessed with respect to such gas at the date of this agreement, provided that Buyer shall not be obligated to pay for any part of such excess amount attributable to any new or additional tax or taxes which is based upon or measured by the natural gasoline or other liquefied hydrocarbon content extracted from the gas or attributable to the volume of gas consumed or lost by Seller in its processing operations. This payment shall be made from month to month as the taxing agency's rights to collect such taxes accrue and as Buyer pays for gas billed to it hereunder for the preceding month. In no event shall this clause be construed to impose on Buyer any obligation to bear any portion of any ad valorem tax, income or excess profits tax, capital stock or franchise tax assessed against Seller.

ARTICLE XIII

Regulatory Bodies

This contract is subject to all present and future valid laws and lawful orders of all regulatory bodies now or hereafter having jurisdiction of the parties.

ARTICLE XIV

Warranty of Title

Seller hereby warrants title to the gas sold hereunder and the right of Seller to sell the same, and Seller warrants that all such gas is owned by Seller free from all liens and adverse claims, including liens to secure payment of production taxes, severance taxes, and other taxes. Seller shall at all times have the obligation to make settlements for all royalties due and payments to Seller's mineral and royalty owners and to make settlements with all other persons having any interest in the gas sold hereunder, and

Seller agrees to indemnify Buyer and save it harmless from all suits, actions, debts, accounts, damages, costs, losses, and expenses arising from or out of adverse claims of any and all persons to said gas or to royalties, taxes, license fees or charges thereon which are applicable before the title thereto passes to Buyer or which may be levied [fol. 361] and assessed upon the sale thereof to Buyer subject to the terms of Article XII. In the event of any adverse claim of any character whatsoever being asserted in respect to any of said gas, Buyer may retain as security for the performance of Seller's obligations with respect to such claim under this Article the purchase price thereof up to the amount of such claim, without interest, until such claim shall have been finally determined, or until Seller shall have furnished surety bond to Buyer conditioned for the protection of Buyer with respect to such claim.

ARTICLE XV

Indemnity

Each of the parties hereto assumes full responsibility and liability in the maintenance and operation of its respective properties and those under the respective control of said parties and agrees to indemnify and save harmless the other party from all liability and expense on account of any and all damages, claims, actions, costs and expenses, including injury to and death of persons arising from any act or accident in connection with the installation, presence, maintenance, and operation of the property and equipment of the indemnifying party.

ARTICLE XVI

Force Majeure

In the event of either party hereto being rendered unable, wholly or in part, by force majeure to carry out its obligations under this agreement, other than to make payments due hereunder, it is agreed that on such party giving notice and full particulars of such force majeure in writing, or by telegraph, to the other party as soon as possible

after the occurrence of the cause relied on, then the obligations of the party giving such notice, so far as they are affected by such force majeure, shall be suspended during the continuance of any inability so caused but for no longer period, and such cause shall as far as possible be remedied with all reasonable dispatch.

[fol. 362] The term "force majeure" as employed herein shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of governments and people, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, freezing of wells or lines of pipe, partial or entire failure of wells, and any other causes, whether of the kind herein enumerated or otherwise, not within the control of the party claiming suspension, and which by the exercise of due diligence such party is unable to prevent or overcome; such term shall likewise include (a) in those instances where any party hereto is required to obtain servitudes, rights-of-way grants, permits or licenses to enable such party to fulfill its obligation hereunder, the inability of such party to acquire, or the delays on the part of such party in acquiring, at reasonable cost and after the exercise of reasonable diligence, such servitudes, rights-of-way grants, permits or licenses, and (b) in those instances where any party hereto is required to furnish materials and supplies for the purpose of constructing or maintaining facilities or is required to secure permits or permissions from any governmental agency to enable such party to fulfill its obligation hereunder, the inability of such party to acquire, or the delays on the part of such party in acquiring, at reasonable cost and after the exercise of reasonable diligence, such materials and supplies, permits and permission.

It is understood and agreed that the settlement of strikes or lockouts shall be entirely within the discretion of the party having the difficulty and that the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts by acceding to the demands of opposing party.

when such course is inadvisable in the discretion of the party having the difficulty.

ARTICLE XVII

Miscellaneous

1. Any notice or notices given by either party under [fol. 363] the terms of this agreement shall be sent by registered mail to the following addresses:

- (a) Cities Service Gas Company
First National Building
Oklahoma City 1, Oklahoma
- (b) Stanolind Oil and Gas Company
Post Office Box 591
Tulsa 2, Oklahoma

The address of either party hereto may be changed under this Section at any time upon written notice. The date of service by mail shall be the date on which such written notice is deposited in the United States Post Office addressed as above provided and with all postage and charges fully prepaid.

2. Seller and Buyer mutually covenant and agree that if at any time during the term of this agreement either party shall sell or otherwise dispose of any of its properties or arrange for the operation thereof which are applicable to or used in the performance of this agreement, such sale, disposition, or arrangement shall only be made to or with a responsible party and shall be made specifically subject to this gas purchase contract; provided, however, that nothing herein contained shall be construed to prevent either party from pledging all or any portion of its property as security under any mortgage, deed of trust, or other similar lien.

3. It is hereby agreed that this agreement shall be subject to the condition that nothing herein shall be construed as affecting any of the relations between the United States and its lessee, particularly in matters of gas waste, taking royalty in kind and the method of computing royalties due

as based on a minimum valuation and in accordance with the terms and provisions of the oil and gas operating regulations applicable to the lands covered by this agreement, and subject to any condition, modification, or revocation that may be prescribed upon review thereof by the Director, Geological Survey, United States Department of the Interior.

4. This agreement and each of its covenants and obligations shall inure to the benefit of and be binding upon the successors, trustees, and assigns of the parties hereto.

[fol. 364] IN WITNESS WHEREOF the parties hereto have duly executed this agreement as of the date first above written.

STANOLIND OIL AND GAS COMPANY

By /s/ J. E. ROUK
Vice President

ATTEST:

/s/ (Illegible)

Assistant Secretary

CITIES SERVICE GAS COMPANY

By /s/ S. B. IRELAN
President

ATTEST:

/s/ W. R. MORTON
Secretary

[fol. 365]

ACKNOWLEDGMENTS

STATE OF OKLAHOMA,
COUNTY OF TULSA, SS

Before me, the undersigned, a Notary Public in and for said County and State on this 26th day of July, 1950, personally appeared J. E. Rouk, to me known to be the identical person who subscribed the name of the maker thereof (STANOLIND OIL AND GAS COMPANY) to the foregoing

instrument as its Vice President and acknowledged to me that he executed the same as his free and voluntary act and deed and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

Given under my hand and seal of office the day and year last above written.

/s/ MARJORIE T. WELCH
Notary Public

My Commission expires November 30, 1950.

(Seal)

STATE OF OKLAHOMA,
COUNTY OF OKLAHOMA, ss

Before me, the undersigned, a Notary Public in and for said County and State on this 27th day of July, 1950, personally appeared S. B. Ireland, to me known to be the identical person who subscribed the name of the maker thereof (CITIES SERVICE GAS COMPANY) to the foregoing instrument as its President and acknowledged to me that he executed the same as his free and voluntary act and deed and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

Given under my hand and seal of office the day and year last above written.

/s/ ROSEMARY BERNEY
Notary Public

My Commission expires Feb. 25, 1954.

(Seal)

[fol 366]

EXHIBIT A-1

FPC Gas Rate

Schedule No. 84

Supplement No. 1

Filing Date: Nov 16 1954

Effective Date: Accepted

Received

Nov 16 5 07 AM '54

Federal Power Commission

18196

STANOLIND OIL AND GAS COMPANY

Tulsa, Oklahoma

July 28, 1950

Cities Service Gas Company

First National Building

Oklahoma City, Oklahoma

Gentlemen:

Please refer to that certain Gas Purchase Contract dated June 23, 1950, between us, providing for the sale and purchase of gas from the Kansas Hugoton Field.

This Contract provides by Article IX that from and after June 22, 1961, the price for gas sold thereunder shall be the fair and reasonable price for each successive five-year period thereafter based on and compared with the price of gas then being paid by other purchasers in the field under similar contracts and conditions, but in no event shall the price be less than twelve cents per thousand cubic feet.

It is agreed that, in the event it is necessary to resort to litigation to determine the fair and reasonable price for each successive five-year period, any such litigation if the same be brought in a State court shall be filed and maintained in a court and before a judge whose venue or district does not embrace a substantial gas producing area.

If the foregoing is in accordance with your understanding of our agreement, please indicate your acceptance by signing in the space provided below.

Yours very truly,

STANOLIND OIL AND GAS COMPANY

By /s/ J. E. ROUK
Vice President

ACCEPTED this 29th day
of July, 1950.

CITIES SERVICE GAS COMPANY

By /s/ S. B. IRELAN

COPY

[fol. 367]

EXHIBIT A-2

FPC Gas Rate

Schedule No. 84

Supplement No. 2

Filing Date: Nov 16 1954

Effective Date: Accepted

Received

Nov 16 5 07 AM '54

Federal Power Commission

18196

STANGLIND OIL AND GAS COMPANY

Tulsa, Oklahoma

July 28, 1950

Cities Service Gas Company

First National Building

Oklahoma City, Oklahoma

Gentlemen:

We have, effective June 23, 1950, entered into with you a new Gas Purchase Contract which supersedes our Gas Purchase Contract of June 13, 1946, covering certain gas producing areas in the Kansas Hugoton Field.

On September 15, 1949, we farmed out to Mr. W. E. Bakke, of San Antonio, Texas, certain leases covered by the Gas Purchase Contract of June 13, 1946. This farm-out was made subject to the Gas Purchase Contract of June 13, 1946, with the understanding that if we entered into a new Gas Purchase Contract with you we would secure the same terms and conditions of the new contract for Mr. Bakke.

We have entered into the new Gas Purchase Contract with the understanding that you will offer to Mr. Bakke the same terms, conditions, and price as are set forth in the Gas Purchase Contract of June 23, 1950, insofar as they are applicable for the gas produced from his acreage covered by the Gas Purchase Contract of June 13, 1946.

If the foregoing is in accordance with your understanding of our agreement, please indicate your acceptance by signing in the space provided below.

Yours very truly,

STANOLIND OIL AND GAS COMPANY

By /s/ J. E. ROUK
Vice President

ACCEPTED this 29th day
of July, 1950.

CITIES SERVICE GAS COMPANY

By /s/ S. B. IRELAN
President

COPY

[fol. 368]

EXHIBIT A-3

FPC Gas Rate

Schedule No. 84

Supplement No. 3

Filing Date: Nov 16 1954

Effective Date: Accepted

Received

Nov 16 5 07 AM '54

Federal Power Commission

#18196

STANOLIND OIL AND GAS COMPANY
OKLAHOMA CITY, OKLAHOMA

P. O. Box 1654
August 8, 1950

Cities Service Gas Company
Oklahoma City, Oklahoma

Gentlemen:

We are selling gas to you from our Bear Gas Unit, Section 17-32S-40W, Morton County, Kansas; in accordance with an agreement reached in exchange of letters between us, ours of March 8, 1949, and yours of March 10, 1949.

Inasmuch as said agreement provided for delivery under the general terms of our contract of June 13, 1946, which contract has now been superseded by our contract of June 23, 1950, it is now necessary to provide some other basis for the continued sale to you of gas from the well on this Unit.

We, therefore, propose to sell and deliver to you the gas from said Unit under the general provisions of said contract of June 23, 1950, as applicable, except that either of us may terminate this arrangement by giving thirty (30) days' written notice to the other.

Our respective corporate signatures hereto will indicate the agreement of each of us to the foregoing proposal.

Yours truly,

STANOLIND OIL AND GAS COMPANY

By /s/ J. E. SWEARINGEN
Its Attorney In Fact

Approved NS

Accepted this 13th day of
December, 1950.

CITIES SERVICE GAS COMPANY

By /s/ GEO. H. BAIRD
Vice President

ATTEST:

/s/ A. W. LEVAN
Asst. Secretary

[SEAL]

COPY

[fol. 369]

EXHIBIT A-4

FPC Gas Rate

Schedule No. 84

Supplement No. 4

Filing Date: Nov 16 1954

Effective Date: Accepted

Received

Nov 16 5 08 AM '54
Federal Power Commission

#18196

AGREEMENT TO SUBSTITUTE DEDICATED RESERVES

WHEREAS, under the provisions of Article IV, *Dedication*, of GAS PURCHASE CONTRACT (Hugoton Field, Kansas) between STANOLIND OIL AND GAS COMPANY, as Seller, and CITIES SERVICE GAS COMPANY, as Buyer, dated June 23, 1950, said Seller desires to obtain release of its dedicated reserves thereunder insofar as the same cover the following described lands situated in Seward County, Kansas, to-wit:

NE/4 Section, 23-32S-33W
SE/4 Section 29-34S-33W

and to substitute therefor the following acreage situated in Haskell County, Kansas, to-wit:

S/2 Section 22-30S-33W

Now, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, it is hereby agreed between said Seller and Buyer as follows:

Buyer does hereby release Seller's dedicated reserves from the dedication under said Contract insofar as same cover the lands first above described.

Seller hereby substitutes for said released acreage to the fulfillment and performance of said agreement all of Seller's dedicated reserves under the lands last above described, and Buyer hereby approves said substitution.

DATED, This 3rd day of October, 1950.

STANOLIND OIL AND GAS COMPANY

By: /s/ J. E. SWEARINGEN
J. E. Swearingen
Attorney-in-Fact

CITIES SERVICE GAS COMPANY

By: /s/ GEO. H. BAIRD
Vice President

ATTEST:

/s/ A. W. LEVAN
Asst. Secretary

Approved NS

[fol. 370]

Received
Nov 16 5 08 AM '54
Federal Power Commission

STATE OF OKLAHOMA)
COUNTY OF OKLAHOMA) ss.

Before me, JANETTE SAUNDERS, a Notary Public, within and for said County and State, on this 3rd day of October, 1950, personally appeared J. E. SWEARINGEN, to me known

to be the identical person who executed the within and foregoing instrument as Attorney-in-Fact of STANOLIND OIL AND GAS COMPANY, a corporation, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ JANETTE SAUNDERS
Notary Public

My commission expires:
August 22, 1954.

[SEAL]

STATE OF OKLAHOMA)
COUNTY OF OKLAHOMA)

Before me, ROSEMARY BERNEY, a Notary Public in and for said State, on this 29th day of November, 1950, personally appeared GEO. H. BAIRD, to me known to be the identical person who subscribed the name of CITIES SERVICE GAS COMPANY to the foregoing instrument as its Vice President and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

In witness whereof I hereunto set my hand and official seal.

/s/ ROSEMARY BERNEY
Notary Public

My commission expires:
Feb. 25, 1954

[SEAL]

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before Me, ROSEMARY BERNEY, a Notary Public in and for said State, on this 29th day of November, 1950, personally appeared GEO. H. BAIRD, to me known to be the identical person who subscribed the name of CITIES SERVICE GAS COMPANY to the foregoing instrument as its Vice President and acknowledged to that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

In witness whereof I hereunto set my hand and official seal.

/s/ ROSEMARY BERNEY
Notary Public

My commission expires:

Feb. 25, 1954

[SEAL]

[fol. 379]

EXHIBIT A-8

FPC Gas Rate

Schedule No. 84

Supplement No. 8

Filing Date: Nov 16 1954

Effective Date: Accepted

Received

Nov 16 5 08 AM '54

Federal Power Commission

#18,196

AGREEMENT TO SUBSTITUTE
DEDICATED RESERVES

WHEREAS, under the provisions of Article IV, *Dedication*, of GAS PURCHASE CONTRACT (Hugoton Field, Kansas) between STANOLIND OIL AND GAS COMPANY, as Seller, and CITIES SERVICE GAS COMPANY, as Buyer, dated June 23, 1950, said Seller desires to obtain release of its dedicated reserves thereunder insofar as the same cover the following described lands situated in Morton County, Kansas, to-wit:

Northwest Quarter (NW/4) of Section Thirty-Two (32), Township Thirty-two South (T32S), Range Forty West (R40W),

and to substitute therefor the following described acreage situated in Morton County, Kansas, to-wit:

Northwest Quarter (NW/4) of Section Thirty;
Two (32), Township Thirty-two South (T32S),
Range Forty West (R40W).

Now, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, it is hereby agreed between said Seller and Buyer as follows:

Buyer does hereby release Seller's dedicated reserves from the dedication under said Contract insofar as same cover the lands first above described.

Seller hereby substitutes for said released acreage to the fulfillment and performance of said agreement all of Seller's dedicated reserves under the lands last above described, and Buyer hereby approves said substitution.

DATED, This 22 day of November, 1950.

STANOLIND OIL AND GAS COMPANY

By: /s/ J. E. SWEARINGEN
Its Attorney-in-Fact

Approved—EWC, HOL

CITIES SERVICE GAS COMPANY

By: /s/ GEO. H. BAIRD
Vice President

ATTEST:

/s/ A. W. LEVAN
Asst. Secretary

[SEAL]

[fol. 380]

STATE OF OKLAHOMA)
) ss
COUNTY OF OKLAHOMA)

Before me, JANETTE SAUNDERS, a Notary Public, within and for said County and State, on this 22 day of November,

[fol. 371]

EXHIBIT A-5

FPC Gas Rate

Schedule No. 84

Supplement No. 5

Filing Date: Nov 16, 1954

Effective Date: Accepted

Received

Nov 16 5 08 AM '54

Federal Power Commission

#18196

AGREEMENT TO SUBSTITUTE DEDICATED RESERVES

WHEREAS, under the provisions of Article IV, *Dedication*, of GAS PURCHASE CONTRACT (Hugoton Field, Kansas) between STANOLIND OIL AND GAS COMPANY, as Seller, and CITIES SERVICE GAS COMPANY, as Buyer, dated June 23, 1950, said Seller desires to obtain release of its dedicated reserves thereunder insofar as the same cover the following described lands situate in Morton County, Kansas, to-wit:

East Half of the Northwest Quarter (E/2 NW/4) of Section Thirty-four (34), Township Thirty-four South (T34S), Range Forty-one West (R41W).

and to substitute therefor the following described acreage situate in Finney County, Kansas, to-wit:

Lot Five (5) and Lot Six (6) of Section Fifteen (15), Township Twenty-four South (T24S), Range Thirty-three West (R33W).

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, it is hereby agreed between said Seller and Buyer as follows:

Buyer does hereby release Seller's dedicated reserves from the dedication under said Contract insofar as same cover the lands first above described.

Seller hereby substitutes for said released acreage to the fulfillment and performance of said agreement all of Seller's dedicated reserves under the lands last

above described, and Buyer hereby approves said substitution.

DATED, This 5th day of October, 1950.

STANOLIND OIL AND GAS COMPANY

By: /s/ J. E. SWEARINGEN
J. E. Swearingen, Attorney-in-Fact

CITIES SERVICE GAS COMPANY

By: /s/ GEO. H. BAIRD
Vice President

Approved—EWC, NS

ATTEST:

/s/ A. W. LEVANS
Asst. Secretary

[SEAL]
[fol. 372]

STATE OF OKLAHOMA)
COUNTY OF OKLAHOMA)

Before Me, JANETTE SAUNDERS, a Notary Public, within and for said County and State, on this 3rd day of October, 1950, personally appeared J. E. SWEARINGEN, to me known to be the identical person who executed the within and foregoing instrument as Attorney-in-Fact of STANOLIND OIL AND GAS COMPANY, a corporation, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ JANETTE SAUNDERS
Notary Public

My Commission expires:
August 22, 1954

[SEAL]

STATE OF OKLAHOMA)
COUNTY OF OKLAHOMA)

Before Me, ROSEMARY BERNEY, a Notary Public in and for said State, on this 29th day of November, 1950, personally appeared GEO. H. BAIRD, to me known to be the identical person who subscribed the name of CITIES SERVICE GAS COMPANY to the foregoing instrument as its Vice President and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

In witness whereof I hereunto set my hand and official seal.

/s/ ROSEMARY BERNEY
Notary Public

My Commission expires:
Feb. 25, 1954

[SEAL]

[fol. 373]

EXHIBIT A-6

FPC Gas Rate
 Schedule No. 84
 Supplement No. 6
 Filing Date: Nov 16 1954
 Effective Date: Accepted

Received
 Nov 16 5 08 AM '54
 Federal Power Commission

Received
 Oct 16 1960
 Producing Department

#18,196

CITIES SERVICE GAS COMPANY
 FIRST NATIONAL BUILDING
 OKLAHOMA CITY 7, OKLAHOMA

October 11, 1950

Stanolind Oil and Gas Company
 First National Building
 Oklahoma City, Oklahoma
 Attention: Mr. E. F. Diwocky

Gentlemen:

Pursuant to your Mr. Diwocky's letter of September 1, 1950, relative to the accounting of gas used and retained in liquid form at the Stano plant, Grant County, Kansas, this will advise that the proposed method for determining such gas as outlined in Mr. Diwocky's letter is agreeable and acceptable to Cities Service Gas Company until such future time as it may be mutually desirable to Stanolind and Cities Service to amend the procedure.

In connection with the method proposed it is our understanding that:

(1) Stanolind will install, operate and maintain a master meter on all plant fuel.

(2) Stanolind will install, operate and maintain a meter on the flare gas line at said plant.

Cities Service is to have the right to witness tests and gravity determinations on the above meters. Stanolind will report the volumes recorded by said meters to Cities Service daily and forward the charts from same to Cities Service at the end of each accounting month for checking. Said charts will be returned to Stanolind for filing.

(3) Stanolind will report daily the volumes of natural gasoline and L.P.G. products produced and the vapor pressure thereof. Cities shall have the right to request samples periodically of each product for a fractional analysis determination.

It is our thought this method of accounting should be put into effect as of September 23 with respect to the liquid hydrocarbons retained, and effective with respect to plant fuel and flare gas as soon as Stanolind can install said meters.

Yours very truly,

/s/ GEO. H. BAIRD
Vice President

George H. Baird/jh

[fol. 374]

Received
Nov 16 5 08 AM '54
Federal Power Commission

TABLE NO. 1
NATURAL GASOLINE

* Cubic Feet of Gas at 16.4 PSIA and 60° F. Per
Gallon of Gasoline Vs Reid Vapor Pressure
at 100° F., Calculated for Stano Plant, Ulysses,
Kansas

Reid Vapor Pressure PSIA at 100° F.	Cubic Feet of Gas (16.4# & 60° F.) per Gallon of Gasoline
7.50- 8.49 Lbs.	21.87 Cu. Ft.
8.50- 9.49	22.24
9.50-10.49	22.56
10.50-11.49	22.76
11.50-12.49	22.96
12.50-13.49	23.09
13.50-14.49	23.21
14.50-15.49	23.33
15.50-16.49	23.45
16.50-17.49	23.58
17.50-18.49	23.70
18.50-19.49	23.82
19.50-20.49	23.95
20.50-21.49	24.08
21.50-22.49	24.21
22.50-23.49	24.34
23.50-24.49	24.47
24.50-25.49	24.61
25.50-26.49	24.74
26.50-27.49	24.87
27.50-28.49	25.00
28.50-29.49	25.14
29.50-30.49	25.28
30.50-31.49	25.42
31.50-32.49	25.57
32.50-33.49	25.72
33.50-34.49	25.88
34.50-35.49	26.04

EJY/me
1/9/51

[fol. 375]

TABLE NO. 2

LPG

Cubic Feet of Gas at 16.4 PSIA and 60° F. Per Gallon of LPG Vs
 NGAA Vapor Pressure PSIG at 100° F., Calculated for Stano Plant
 Ulysses, Kansas, Elevation 3146', Average Atmospheric Pressure
 13.1 PSIA

Vapor Pressure NGAA	Cu. Ft. per Gallon	Vapor Pressure NGAA	Cu. Ft. per Gallon	Vapor Pressure NGAA	Cu. Ft. per Gallon
45.50- 46.49	28.11	90.50- 91.49	29.52	135.50-136.49	31.09
46.50- 47.49	28.14	91.50- 92.49	29.55	136.50-137.49	31.13
47.50- 48.49	28.17	92.50- 93.49	29.58	137.50-138.49	31.17
48.50- 49.49	28.20	93.50- 94.49	29.62	138.50-139.49	31.21
49.50- 50.49	28.23	94.50- 95.49	29.65	139.50-140.49	31.25
50.50- 51.49	28.26	95.50- 96.49	29.68	140.50-141.49	31.28
51.50- 52.49	28.29	96.50- 97.49	29.71	141.50-142.49	31.32
52.50- 53.49	28.32	97.50- 98.49	29.75	142.50-143.49	31.35
53.50- 54.49	28.35	98.50- 99.49	29.79	143.50-144.49	31.39
54.50- 55.49	28.38	99.50-100.49	29.82	144.50-145.49	31.43
55.50- 56.49	28.41	100.50-101.49	29.86	145.50-146.49	31.47
56.50- 57.49	28.44	101.50-102.49	29.89	146.50-147.49	31.51
57.50- 58.49	28.47	102.50-103.49	29.92	147.50-148.49	31.54
58.50- 59.49	28.50	103.50-104.49	29.96	148.50-149.49	31.58
59.50- 60.49	28.53	104.50-105.49	29.99	149.50-150.49	31.62
60.50- 61.49	28.57	105.50-106.49	30.02	150.50-151.49	31.66
61.50- 62.49	28.60	106.50-107.49	30.06	151.50-152.49	31.70
62.50- 63.49	28.63	107.50-108.49	30.09	152.50-153.49	31.74
63.50- 64.49	28.66	108.50-109.49	30.13	153.50-154.49	31.78
64.50- 65.49	28.69	109.50-110.49	30.16	154.50-155.49	31.82
65.50- 66.49	28.72	110.50-111.49	30.20	155.50-156.49	31.86
66.50- 67.49	28.76	111.50-112.49	30.23	156.50-157.49	31.89
67.50- 68.49	28.79	112.50-113.49	30.27	157.50-158.49	31.93
68.50- 69.49	28.82	113.50-114.49	30.31	158.50-159.49	31.97
69.50- 70.49	28.85	114.50-115.49	30.34	159.50-160.49	32.01
70.50- 71.49	28.88	115.50-116.49	30.37	160.50-161.49	32.05
71.50- 72.49	28.91	116.50-117.49	30.40	161.50-162.49	32.09
72.50- 73.49	28.94	117.50-118.49	30.44	162.50-163.49	32.13
73.50- 74.49	28.97	118.50-119.49	30.48	163.50-164.49	32.17
74.50- 75.49	29.00	119.50-120.49	30.51	164.50-165.49	32.21
75.50- 76.49	29.03	120.50-121.49	30.55	165.50-166.49	32.25
76.50- 77.49	29.07	121.50-122.49	30.58	166.50-167.49	32.29
77.50- 78.49	29.10	122.50-123.49	30.62	167.50-168.49	32.33

Vapor Pressure NGAA	Cu. Ft. per Gallon	Vapor Pressure NGAA	Cu. Ft. per Gallon	Vapor Pressure NGAA	Cu. Ft. per Gallon
78.50-79.49	29.13	123.50-124.49	30.66	168.50-169.49	32.37
79.50-80.49	29.16	124.50-125.49	30.69	169.50-170.49	32.40
80.50-81.49	29.19	125.50-126.49	30.73	170.50-171.49	32.44
81.50-82.49	29.23	126.50-127.49	30.76	171.50-172.49	32.48
82.50-83.49	29.26	127.50-128.49	30.80	172.50-173.49	32.52
83.50-84.49	29.29	128.50-129.49	30.83	173.50-174.49	32.56
84.50-85.49	29.32	129.50-130.49	30.87	174.50-175.49	32.60
85.50-86.49	29.36	130.50-131.49	30.91	175.50-176.49	32.64
86.50-87.49	29.39	131.50-132.49	30.94		
87.50-88.49	29.42	132.50-133.49	30.98		
88.50-89.49	29.45	133.50-134.49	31.02		
89.50-90.49	29.48	134.50-135.49	31.06		

EJY/me

1/9/51

[fol. 376]

TABLE NO. 3

HIGH VAPOR PRESSURE LPG

Cubic Feet of Gas at 16.4 PSIA and 60° F. Per Gallon of Propane-Ethane Mixture Vs NGAA Vapor Pressure PSIG at 100° F., Calculated for Stano Plant, Ulysses, Kansas, Elevation 3146', Average Atmospheric Pressure 13.1 PSIA.

Vapor Pressure (NGAA) PSIG at 100° F. at Stano Plant.	Cubic Feet of Gas (16.4# & 60° F.) per Gallon of LPG
176.5-184.9	32.68
185.0-194.9	32.72
195.0-204.9	32.76
205.0-214.9	32.80
215.0-224.9	32.84
225.0-234.9	32.88
235.0-244.9	32.92
245.0-254.9	32.96
255.0-264.9	33.00
265.0-274.9	33.04
275.0-284.9	33.08
285.0-294.9	33.12
295.0-304.9	33.16

EJY/me

(Date Illegible)

[fol. 377]

EXHIBIT A-7

FPC Gas Rate
Schedule No. 84
Supplement No. 7
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 08 AM '54
Federal Power Commission

#18,196

AGREEMENT TO SUBSTITUTE
DEDICATED RESERVES

WHEREAS, under the provisions of Article IV, *Dedication*, of GAS PURCHASE CONTRACT (Hugoton Field, Kansas) between STANOLIND OIL AND GAS COMPANY, as Seller, and CITIES SERVICE GAS COMPANY, as Buyer, dated June 23, 1950, said Seller desires to obtain release of its dedicated reserves thereunder insofar as the same cover the following described lands situated in Stanton County, Kansas, to-wit:

SW/4 Section 13-27S-40W

and to substitute therefor the following described acreage situated in Stanton County, Kansas, to-wit:

SW/4 Section 18-27S-39W

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, it is hereby agreed between said Seller and Buyer as follows:

Buyer does hereby release Seller's dedicated reserves from the dedication under said Contract insofar as same cover the lands first above described.

Seller hereby substitutes for said released acreage to the fulfillment and performance of said agreement all of Seller's dedicated reserves under the lands last

above described, and Buyer hereby approves said substitution.

DATED, This 16th day of October, 1950.

STANOLIND OIL AND GAS COMPANY

By: /s/ J. E. SWEARINGEN

J. E. Swearingen, Attorney-in-Fact

Approved—EWC, NS

CITIES SERVICE GAS COMPANY

By: /s/ GEO. H. BAIRD

Vice President

ATTEST:

/s/ A. W. LEVAN

Asst. Secretary

[SEAL]

[fol. 378]

STATE OF OKLAHOMA

COUNTY OF OKLAHOMA

Before Me, JANETTE SAUNDERS, a Notary Public, within and for said County and State, on this 16th day of October, 1950, personally appeared J. E. SWEARINGEN, to me known to be the identical person who executed the within and foregoing instrument as Attorney-in-Fact of STANOLIND OIL AND GAS COMPANY, a corporation, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ JANETTE SAUNDERS
Notary Public

My commission expires:

[SEAL]

[fol. 381]

EXHIBIT A-9

FPC Gas Rate

Schedule No. 84

Supplement No. 9

Filing Date: Nov. 16 1954

Effective Date: Accepted

Received

Nov 16 5 08 AM '54

Federal Power Commission

#18,196

November 29, 1950

Stanolind Oil and Gas Company

Stanolind Building

Tulsa, Oklahoma

Gentlemen:

You notified us that you have one-half interest in a well and the acreage in Section 24-24-37 in the Kansas-Hugoton Field and that Gulf Oil Company owns the other one-half interest in that section and well. You further advised that under contractual arrangement with Kansas-Nebraska Gas Company it is to purchase the production from the Gulf's one-half interest and that a line would be laid by Kansas-Nebraska to the well in the near future through which they would take that gas.

We have talked with a representative of the Kansas-Nebraska Gas Company and requested them to prepare and forward to us a contract covering the purchase from us of the gas allocable to your interest in said well and acreage. The contract will be subject to 30 days termination.

We will purchase your part of the gas from said well under our present gas purchase contract with your company and will pay you, therefore, the 8.4 cents per Mcf provided in that contract. We will also pay you the 6/10 cent per Mcf provided in the Bill of Sale covering our acquisition of the "A" gathering system.

If the foregoing arrangement for temporary outlet for your portion of said gas is satisfactory, please execute this

letter in the space provided and return to us two such executed copies.

Yours very truly, /

CITIES SERVICE GAS COMPANY

/s/ GEO. H. BAIRD
Vice President

Geo. H. Baird
STANOLIND OIL AND GAS COMPANY

By: /s/ J. E. SWEARINGEN
Its Attorney-in-Fact

This 13 day of December 1950.

Approved—NS

[fol. 382]

EXHIBIT A-10

FPC Gas Rate
Schedule No. 84
Supplement No. 10
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 08 AM '54
Federal Power Commission

#18,196

AGREEMENT TO SUBSTITUTE DEDICATED RESERVES

WHEREAS, under the provisions of Article IV, *Dedication*, of GAS PURCHASE CONTRACT (Hugoton Field, Kansas) between STANOLIND OIL AND GAS COMPANY, as Seller, and CITIES SERVICE GAS COMPANY, as Buyer, dated June 23, 1950, said Seller desires to obtain release of its dedicated reserves thereunder insofar as the same covers the following described lands situated in Kearny County, Kansas, to-wit:

N/2 and SW/4 Section 6-25S-37W

and to substitute therefor the following acreage situated in Stanton County, Kansas, to-wit:

W/2 and SE/4 Section 31-27S-39W

Now, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, it is hereby agreed between said Seller and Buyer as follows:

Buyer does hereby release Seller's dedicated reserves from the dedication under said Contract insofar as same covers the lands first above described.

Seller hereby substitutes for said released acreage to the fulfillment and performance of said agreement all of Seller's dedicated reserves under the lands last above described, and Buyer hereby approves said substitution.

DATED, This 13 day of December, 1950

STANOLIND OIL AND GAS COMPANY

By: /s/ J. E. SWEARINGEN
J. E. Swearingen
Attorney-in-Fact

Approved—HOL

CITIES SERVICE GAS COMPANY

By: /s/ GEO. H. BAIRD
Vice-President

ATTEST:

/s/ A. W. LEVAN
Asst. Secretary

[fol. 383]

STATE OF OKLAHOMA)
) SS.
COUNTY OF OKLAHOMA)

Before me, JANETTE SAUNDERS, a Notary Public, within and for said County and State, on this 13 day of December, 1950, personally appeared J. E. SWEARINGEN, to me known to be the identical person who executed the within and foregoing instrument as Attorney-in-Fact of STANOLIND OIL AND GAS COMPANY, a corporation, and acknowledged to me that he executed the same as his free and voluntary act and deed,

and as the free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ JANETTE SAUNDERS
Notary Public

My commission expires:
My Commission Expires Aug. 22, 1954

[SEAL]

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before me, ROSEMARY BERNEY, a Notary Public, in and for said State on this 20th day of December, 1950, personally appeared GEO. H. BAIRD, to me known to be the identical person who subscribed the name of CITIES SERVICE GAS COMPANY to the foregoing instrument as its Vice-President and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

In witness whereof, I hereunto set my hand and official seal.

ROSEMARY BERNEY
Notary Public

My commission expires:
Feb. 25, 1954

[fol. 384]

EXHIBIT A-11

FPC Gas Rate

Schedule No. 84

Supplement No. 11

Filing Date: Nov 16 1954

Effective Date: Accepted

Received

Nov 16 5 08 AM '54

Federal Power Commission

#18,196

AGREEMENT TO SUBSTITUTE DEDICATED RESERVES

WHEREAS, under the provisions of Article IV, *Dedication*, of GAS PURCHASE CONTRACT (Hugoton Field, Kansas) between STANOLIND OIL AND GAS COMPANY, as Seller, and CITIES SERVICE GAS COMPANY, as Buyer, dated June 23, 1950, said Seller desires to obtain release of its dedicated reserves thereunder insofar as the same cover the following described lands, to-wit:

E/2 Section 36-31S-33W, Seward County, Kansas

NW/4 Section 22-22S-35W, Kearny County, Kansas

and to substitute therefor the following described acreage situated in Seward County, Kansas, to-wit:

N/2 Section 26-31S-33W

Now, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, it is hereby agreed between said Seller and Buyer as follows:

Buyer does hereby release Seller's dedicated reserves from the dedication under said Contract insofar as same cover the lands first above described.

Seller hereby substitutes for said released acreage to the fulfillment and performance of said agreement all of Seller's dedicated reserves under the lands last above

described, and Buyer hereby approves said substitution.

DATED, This 5th day of February, 1951.

STANOLIND OIL AND GAS COMPANY

By: /s/ V. G. HILL
Its Attorney in Fact
Approved—EMC, HOL

CITIES SERVICE GAS COMPANY

By: /s/ GEO. H. BAIRD
Vice President

ATTEST:

/s/ A. W. LEVAN
Asst. Secretary

[fol. 385]

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before Me, HELEN E. MOISES, a Notary Public, within and for said County and State, on this 5th day of February, 1951, personally appeared V. G. STIER, to be known to be the identical person who executed the within and foregoing instrument as Attorney-in-Fact of STANOLIND OIL AND GAS COMPANY, a corporation, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ HELEN E. MOISES
Notary Public

My commission expires:
Aug. 22, 1953.

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before Me, ROSEMARY BERNEY, a Notary Public, in and for said State, on this 15th day of February, 1951, personally appeared GEO. H. BAIRD, to me known to be the identical person who subscribed the name of CITIES SERVICE GAS COMPANY, to the foregoing instrument as its Vice President and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

In witness whereof I hereunto set my hand and official seal.

/s/ ROSEMARY BERNEY
Notary Public

My commission expires:
Feb. 25, 1954

[fol. 386]

EXHIBIT A-12

FPC Gas Rate

Schedule No. 84

Supplement No. 12

Filing Date: Nov 16 1954

Effective Date: Accepted

Received

Nov 16 5 09 AM '54

Federal Power Commission

#18,196

AGREEMENT TO SUBSTITUTE
DEDICATED RESERVES

WHEREAS, under the provisions of Article IV, *Dedication*, of GAS PURCHASE CONTRACT (Hugoton Field, Kansas) between STANOLIND OIL AND GAS COMPANY, as Seller, and CITIES SERVICE GAS COMPANY, as Buyer, dated June 23, 1950, said Seller desires to obtain release of its dedicated reserves thereunder insofar as the same cover the following described lands, to-wit:

- E/2 Section 25-25S-37W, S/2 Section 2-26S-37W, N/2 Section 16, NE/4 Section 2-24S-36W, W/2 and SE/4 Section 2, N/2 and SE/4 Section 26-24S-37W, Kearny

County, Kansas, and all Section 9-24S-34W, Finney
County, Kansas,

and to substitute therefor the following described acreage
situated in Kearny County, Kansas, to-wit:

E/2 Section 16, the N/2 Section 26, the NE/4 Section
24, all of Section 3-26S-38W, S/2 NW/4 Section 10,
that part of the E/2 W/2 north of the Arkansas River,
in Section 16, SE/4 and N/2 and that part of the W/2
SW/4 north of the Arkansas River, in Section 8-25S-
37W; W/2 SW/4 Section 9-24S-36W, SW/4 Section
20-24S-37W and NW/4 Section 32-23S-37W, Kearny
County, Kansas.

NOW, THEREFORE, in consideration of the premises and of
the mutual covenants herein contained, it is hereby agreed
between said Seller and Buyer as follows:

Buyer does hereby release Seller's dedicated reserves
from the dedication under said Contract insofar as
same cover the lands first above described.

Seller hereby substitutes for said released acreage
to the fulfillment and performance of said agreement
all of Seller's dedicated reserves under the lands last
above described, and Buyer hereby approves said sub-
stitution.

Dated, This 23rd day of February, 1951.

STANOLIND OIL AND GAS COMPANY

By: /s/ V. G. HILL

V. G. Hill, Attorney-in-Fact

Approved—EMC, NS, DMX

CITIES SERVICE GAS COMPANY

By: /s/ GEO. H. BAIRD

Vice President

ATTEST:

/s/ A. W. LEVAN

Asst. Secretary

[fol. 387]

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before Me, M. J. HITCHCOCK, a Notary Public, within and for said County and State, on this 23rd day of February, 1951, personally appeared V. G. HILL, to me known to be the identical person who executed the within and foregoing instrument as Attorney-in-Fact of STANOLIND OIL AND GAS COMPANY, a corporation, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ M. J. HITCHCOCK
Notary Public

My commission expires: July 21, 1953

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before Me, ROSEMARY BERNEY, a Notary Public in and for said State, on this 1st day of March, 1951, personally appeared GEO. H. BAIRD, to me known to be the identical person who subscribed the name of CITIES SERVICE GAS COMPANY to the foregoing instrument as its Vice President and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation for the uses and purposes, therein set forth.

In witness whereof I hereunto set my hand and official seal.

/s/ ROSEMARY BERNEY
Notary Public

My commission expires: Feb. 25, 1954

[fol. 388]

EXHIBIT A-13

FPC Gas Rate
Schedule No. 84
Supplement No. 13
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 09 AM '54
Federal Power Commission

#18,196

STANOLIND OIL AND GAS COMPANY
OKLAHOMA CITY, OKLAHOMA

P. O. Box 1654
May 18, 1954

Subject: Release of Acreage
Gas Purchase Contract
Cities Service Gas Company
Hugoton Field, Kansas

Cities Service Gas Company
P. O. Box 1995
Oklahoma City, Oklahoma

Gentlemen:

Among the acreage included under our contract with you dated June 23, 1950, is the Peppercorn Gas Unit, Section 4-30S-40W, Stanton County, Kansas. A gas well has been completed on the subject unit and has been shut-in since August, 1946. Tests according to the Bureau of Mines method were run on this well in September, 1948 and indicated a deliverability of only 58 MCF per day. The well is located on the extreme west edge of the "A" area and is about three miles from the nearest wells presently connected to your system.

Inasmuch as this well is not a commercial well as defined under the referenced contract, and in view of the fact that its extremely low productivity makes it seem undesirable and unprofitable to continue to make shut-in payments on the lease, we desire to dispose of this acreage. Unless Cities Service Gas Company desires to acquire this acreage,

we ask that you please indicate your consent to the release of the above described acreage from said contract of June 23, 1950 by signing this agreement in the space provided below.

Yours very truly,

STANOLIND OIL AND GAS COMPANY

/s/ V. G. HILL
Its Attorney In Fact

Approved—FFD, AGD, D

The aforesaid lease acreage is hereby released from the subject contract.
Agreed to this 21st day of May 1951.

CITIES SERVICE GAS COMPANY

/s/ GEO. H. BAIRD
Vice President

ATTEST:

/s/ A. W. LEVAN
Asst Secretary

COPY

[fol. 389]

EXHIBIT A-14

FPC Gas Rate
Schedule No. 84

Supplement No. 14

Filing Date: Nov 16 1954

Effective Date: Accepted

Received

Nov 16 5 09 AM '54

Federal Power Commission

#18,196

AGREEMENT TO SUBSTITUTE DEDICATED RESERVES

WHEREAS, under the provisions of Article IV, *Dedication*, of GAS PURCHASE CONTRACT (Hugoton Field, Kansas) between STANOLIND OIL AND GAS COMPANY, as Seller, and CITIES SERVICE GAS COMPANY, as Buyer, dated June 23, 1950,

said Seller desires to obtain release of its dedicated reserves thereunder insofar as the same cover the following described lands, to-wit:

All of Section 8-25S-37W, Kearny County, Kansas and to substitute therefor the following described acreage situated in Kearny County, Kansas, to-wit:

All of Section 2-24S-37W, Kearny County, Kansas

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, it is hereby agreed between said Seller and Buyer as follows:

Buyer does hereby release Seller's dedicated reserves from the dedication under said Contract insofar as same cover the lands first above described.

Seller hereby substitutes for said released acreage to the fulfillment and performance of said agreement all of Seller's dedicated reserves under the lands last above described, and Buyer hereby approves said substitution.

Dated, This 31st day of May, 1951.

STANOLIND OIL AND GAS COMPANY

By: /s/ V. G. HILL,
V. G. Hill
Attorney-in-Fact

Approved—EMC, HOL

CITIES SERVICE GAS COMPANY

By: /s/ GEO. H. BAIRD
Vice President

ATTEST:

/s/ A. W. LEVAN
Asst Secretary

[fol. 390]

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before Me, the undersigned, a Notary Public, within and for said County and State, on this 31st day of May, 1951, personally appeared V. G. HILL, to me known to be the identical person who executed the within and foregoing instrument as Attorney-in-Fact of STANOLIND OIL AND GAS COMPANY, a corporation, and acknowledged to that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ M. J. HITCHCOCK
Notary Public

My commission expires: July 21, 1953

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before Me, ROSEMARY BERNEY, a Notary Public, in and for said State, on this 7th day of June, 1951, personally appeared GEO. H. BAIRD, to me known to be the identical person who subscribed the name of CITIES SERVICE GAS COMPANY to the foregoing instrument as its Vice President and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

In witness whereof I hereunto set my hand and official seal.

/s/ ROSEMARY BERNEY
Notary Public

My commission expires: Feb 25, 1954

[fol. 391]

EXHIBIT A-15

FPC Gas Rate

Schedule No. 84

Supplement No. 15

Filing Date: Nov 16 1954

Effective date: Accepted

Received

Nov 16 5 09 AM '54

Federal Power Commission

#18,196

AGREEMENT TO SUBSTITUTE
DEDICATED RESERVES

WHEREAS, under the provisions of Article IV, *Dedication*, of GAS PURCHASE CONTRACT (Hugoton Field, Kansas) between STANOLIND OIL AND GAS COMPANY, as Seller, and CITIES SERVICE GAS COMPANY, as Buyer, dated June 23, 1950, said Seller desires to obtain release of its dedicated reserves thereunder insofar as the same cover the following described lands, to-wit:

W/2 Section 3-26S-38W, Kearny County, Kansas
and to substitute therefor the following described acreage situated in Kearny County, Kansas, to-wit:

SE 1/4 Section 2-26S-37W; NE 1/4 Section 26-24S-37W;
Lot 2 and NE 1/4 SW 1/4 Section 8-25S-37W, Kearny
County, Kansas.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, it is hereby agreed between said Seller and Buyer as follows:

Buyer does hereby release Seller's dedicated reserves from the dedication under said Contract insofar as same cover the lands first above described.

Seller hereby substitutes for said released acreage to the fulfillment and performance of said agreement all of Seller's dedicated reserves under the lands last above described, and Buyer approves said substitution.

DATED, This 25 day of June, 1951.

STANOLIND OIL AND GAS COMPANY

By /s/ J. H. FORRESTER
J. H. Forrester
Attorney-in-Fact

Approved—EMC, HOL

CITIES SERVICE GAS COMPANY

By /s/ GEO. H. BAIRD
Vice President

ATTEST:

/s/ A. W. LEVAN
Asst. Secretary

[fol. 392]

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before Me, JANETTE SAUNDERS, a Notary Public, within and for said County and State, on this 25 day of June, 1951, personally appeared J. H. FORRESTER, to me known to be the identical person who executed the within and foregoing instrument as Attorney-in-Fact of STANOLIND OIL AND GAS COMPANY, a corporation, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ JANETTE SAUNDERS
Notary Public

My commission expires:

My Commission Expires Aug. 22, 1954

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before Me, ROSEMARY BERNEY, a Notary Public, in and for said State, on this 29th day of June, 1951, personally appeared GEO. H. BAIRD, to me known to be the identical person who subscribed the name of CITIES SERVICE GAS COMPANY to the foregoing instrument as its Vice President and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

In witness whereof I hereunto set my hand and official seal.

/s/ ROSEMARY BERNEY
Notary Public

My commission expires:
Feb. 25, 1954

[fol. 393]

EXHIBIT A-16

FPC Gas Rate
Schedule No. 84
Supplement No. 16
Filing Date: 11-16-54
Effective Date: Accepted

Received
Nov 16 5 09 AM '54
Federal Power Commission
#18,196

AGREEMENT TO SUBSTITUTE
DEDICATED RESERVES.

WHEREAS, under the provisions of Article IV, *Dedication*, of GAS PURCHASE CONTRACT (Hugoton Field, Kansas) between STANOLIND OIL AND GAS COMPANY, as Seller, and CITIES SERVICE GAS COMPANY, as Buyer, dated June 23, 1950, said Seller desires to obtain release of its dedicated reserves thereunder insofar as the same cover the following described lands situated in Hamilton and Stanton Counties, Kansas, to-wit:

SW/4 Section 25-25S-39W and NE/4 Section 10-26S-39W, Hamilton County, Kansas; the E/2 Section 35-27S-40W, SE/4 Section 5 and SE/4 Section 21-29S-40W, Stanton County, Kansas

and to substitute therefor the following described acreage situated in Hamilton and Stanton Counties, Kansas, to-wit:

Lots 3 and 4, S/2 N/2 and SW/4 Section 2-26S-39W, Hamilton County, Kansas; the NW/4 Section 10-28S-40W, and NW/4 Section 8-30S-40W, Stanton County, Kansas.

Now, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, it is hereby agreed between said Seller and Buyer as follows:

Buyer does hereby release Seller's dedicated reserves from the dedication under said Contract insofar as same cover the lands first above described.

Seller hereby substitutes for said released acreage to the fulfillment and performance of said agreement all of Seller's dedicated reserves under the lands last above described, and Buyer hereby approves said substitution.

DATED, This 2 day of July, 1951.

STANGLIND OIL AND GAS COMPANY

By: /s/ J. H. FORRESTER

J. H. Forrester

Its Attorney-in-Fact

Approved—EMS, NS

CITIES SERVICE GAS COMPANY

By: /s/ GEORGE H. BAIRD

Vice President

ATTEST:

/s/ A. W. LEVAN

Asst. Secretary

[fol. 394]

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

BEFORE ME, JANETTE SAUNDERS, a Notary Public, within and for said County and State, on this 2 day of July, 1951, personally appeared J. H. FORRESTER, to me known to be the identical person who executed the within and foregoing instrument as Attorney-in-Fact of STANOLIND OIL AND GAS COMPANY, a corporation, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal the day and year last above written.

/s/ JANETTE SAUNDERS
Notary Public

My commission expires:

My Commission Expires: Aug. 22, 1954

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

BEFORE ME, ROSEMARY BERNEY, a Notary Public in and for said State, on this 14th day of July, 1951, personally appeared GEO. H. BAIRD, to me known to be the identical person who subscribed the name of CITIES SERVICE GAS COMPANY to the foregoing instrument as its Vice President and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

/s/ ROSEMARY BERNEY
Notary Public

My commission expires:

Feb. 25, 1954

[fol. 395]

EXHIBIT A-17

FPC Gas Rate
Schedule No. 84

Supplement No. 17

Filing Date: Nov 16 1954

Effective Date: Accepted

Received

Nov 16 5 09 AM '54

Federal Power Commission

STANOLIND OIL AND GAS COMPANY

OKLAHOMA CITY, OKLAHOMA

P. O. Box 1654

July 25, 1951

Subject: Termination of Short Term
Contracts
Hugoton Field, Kansas

Colorado Interstate Gas Company

Box 1087

Colorado Springs, Colorado

Attn: Mr. Robert W. Hendee

Gentlemen:

We are selling gas to you from wells on the below named properties in Hugoton Field, Kansas, under short-term contracts. You are aware that the gas from these wells is dedicated to Cities Service Gas Company under a long term contract between that company and us.

Cities Service, being now ready to extend its gathering system thereto, has called upon us as provided in our contract with them for the termination of our short term gas sales agreements covering these wells. Accordingly as provided in our contracts with you, which respective contracts are identified below by date thereof and by property covered therein, we hereby notify you of our election to terminate each of these contracts insofar as they cover our interest in the gas sold thereunder, said termination to be effective as

of the date shown under the caption, "Designated Date of Cancellation".

Lease or Unit	Date of Contract	Notice Required to Cancel	Designated Date of Cancellation
<i>17,635</i> Waechter "H"	3-1-50	6 months	1-25-52
<i>14,315</i> Waechter "F"	1-26-48	30 days	10-23-51
<i>14,068</i> Willits "B"	10-16-47	1 day	10-23-51
<i>14,068</i> Dann	10-16-47	1 day	10-23-51
<i>14,068</i> Campbell "D"	10-16-47	1 day	10-23-51
<i>14,068</i> Shell	10-16-47	1 day	10-23-51
<i>17,063</i> Strawn	11-16-49	6 months	1-25-52
<i>17,635</i> Tate-Hutton	3-1-50	6 months	1-25-52
<i>13,682</i> J. D. Hillman	7-29-47	90 days	10-23-51
<i>14,068</i> R. G. Morris	10-16-47	1 day	10-23-51

An acknowledgment of the receipt of this notice by you will be appreciated.

Yours very truly,

STANOLIND OIL AND GAS COMPANY

By /s/ K. W. BOLT
Its Attorney-in-Fact

Approved—SOH, FFD
18196

LSL:mt

COPY

Italics indicate handwritten material.

[fol. 396]

EXHIBIT A-18

FPC Gas Rate

Schedule No. 84

Supplement No. 18

Filing Date: Nov 16 1954

Effective Date: Accepted

Received

Nov 16 5 09 AM '54

Federal Power Commission

STANOLIND OIL AND GAS COMPANY

OKLAHOMA CITY, OKLAHOMA

P. O. Box 1654

July 25, 1951

Subject: Termination of Short
Term Contracts
Hugoton Field, Kansas

Kansas Nebraska Natural Gas Co., Inc.
Hastings, Nebraska

Gentlemen:

We are selling gas to you from wells on the below named properties in Hugoton Field, Kansas, under short term contracts. You are aware that the gas from these wells is dedicated to Cities Service Gas Company under a long term contract between that company and us.

Cities Service, being now ready to extend its gathering system thereto, has called upon us as provided in our contract with them for the termination of our short term gas sales agreements covering these wells. Accordingly as provided in our contracts with you, which respective contracts are identified below by date thereof and by property covered therein, we hereby notify you of our election to terminate each of these contracts insofar as they cover our interest in the gas sold thereunder, said termination to be effective

as of the date shown under the caption, "Designated Date of Cancellation".

Lease or Unit	Date of Contract	Notice Required to Cancel	Designated Date of Cancellation
16,587 White "B"	7-7-49	30 days	10-23-51
16,587 Crawford Gas Unit	7-7-49	30 days	10-23-51
16,587 Martin Gas Unit	7-7-49	30 days	10-23-51
14,273 Cohen Gas Unit	12-15-47	6 months	1-25-52
16,587 Melton Gas Unit	7-7-49	30 days	10-23-51
17,035 Dodge City Gas Unit	11-10-49	30 days	10-23-51
17,035 Bentrup Gas Unit	11-10-49	30 days	10-23-51
No Cont. Orr Gas Unit	Verbal only	At Seller's option	10-23-51

An acknowledgment of the receipt of this notice by you will be appreciated.

Yours very truly,

STANOLIND OIL AND GAS COMPANY

By /s/ K. W. BOLT

Its Attorney-in-Fact

Approved—SOH, FFD
18196

LSL:mt

COPY

Italics indicate handwritten material.

[fol. 397]

EXHIBIT A-19

FPC Gas Rate	13,682—14,068
Schedule No. 84	14,315—17,013
Supplement No. 19	17,452—17,481
Filing Date: Nov 16, 1954	17,635
Effective Date: Accepted	

Received

Nov 16 5.09 AM '54

Federal Power Commission

[Emblem]

CITIES SERVICE GAS COMPANY

FIRST NATIONAL BUILDING
OKLAHOMA CITY 1, OKLAHOMA

August 29, 1951

Stanolind Oil and Gas Company

P. O. Box 1654

Oklahoma City 1, Oklahoma

Attention: Mr. F. F. Diwoky

Gentlemen:

Find hereto attached two copies of proposed agreement with the Colorado Interstate Company whereby they will release wells owned by Stanolind and dedicated to us but now connected to the Colorado Interstate system on temporary agreements prior to the normal cancellation dates. This prior release is requested so that we may reclaim the pipe connecting these wells into the Colorado Interstate system and have it available for use immediately in our 1951 gathering line program. At such a time as the wells are disconnected from the Colorado Interstate system they will be connected into our new gathering system.

In exchange for their agreeing to early termination of the contracts, we agree to make an interconnection with their system and sell and deliver to them gas in quantities equivalent to that which they would have received from the wells had they remained connected to the Colorado system until normal cancellation date.

Italics indicate handwritten material.

If you are agreeable to this transaction between us and Colorado Interstate as outlined above and as provided in the attached agreement, please sign in the space provided below and return one copy for our files.

Yours very truly,

CITIES SERVICE GAS COMPANY

/s/ GEO. H. BAIRD

Geo. H. Baird, Vice President

GHB/c
attach.

ACCEPTED:

STANOLIND OIL AND GAS COMPANY

By /s/ J. E. Swearingen
Its Attorney-In-Fact

Approved—FFD, NS
[fol. 398]

18196

Received

Nov 16 5 09 AM '54

Federal Power Commission

#18,196

METHOD OF CALCULATION OF CUBIC FEET OF GAS PER GALLON OF PROPANE-ETHANE MIXTURE

The physical constants for propane and ethane used in this calculation are taken from NGAA Standard Table No. 2145, (Year 1945) as follows:

	Propane	Ethane
Standard Cubic Feet of Vapor (60°F. & 14.696#) per Gallon of Liquid	36.45	39.35
True Vapor Pressure at 100°F., PSIA	189.5	—

The "apparent" vapor pressure of ethane at 100°F. in blends containing a low ethane content, as quoted by Brown, Katz, Oberfel, and Alden in "Natural Gasoline and the

Volatile Hydrocarbons" 1948, (NGAA) and used in this calculation is 795 PSIA.

Component	Mol %	True V.P. PSIA	Partial V.P. PSIA	Std. Cu. Ft.	Std. Cu. Ft. per Gal.	Gallons
Ethane	10	$\times 795$	$= 79.50$	10	$\div 39.35$	$= 0.2541$
Propane	90	$\times 189.5$	$= 170.55$	90	$\div 36.45$	$= 2.4691$
Total	100		250.05	100		2.7232

$$100 \div 2.7232 = 36.72 \text{ Cu. Ft./Gal.}$$

The calculated NGAA vapor pressure at 100° F. at Stano Plant is $250.05 - 13.1 = 236.95$ PSIG

The calculated true vapor pressure of a propane-ethane mixture is:

$$\begin{aligned} \text{TVP} &= 189.5 + \text{Mol \% } C_2 \times (7.950 - 1.895) \\ &= 189.5 + (\text{Mol \% } C_2 \times 6.055) \end{aligned}$$

$$\text{Mol \% } C_2 = \frac{\text{TVP} - 189.5}{6.055} = \frac{\text{VP(NGAA)} - 176.4}{6.055}$$

[fol. 399] The standard cubic feet of gas (60° F. & 14.696 PSIA) per gallon of propane-ethane mixture are:

$$\frac{100}{36.45 - \text{Mol \% } C_2 (36.45 - 39.35)}$$

$$\frac{100}{36.45 - \text{Mol \% } C_2 (36.45 - 39.35)}$$

$$\frac{100}{2.743,484,200 - \text{Mol \% } C_2 (.027,434,842 - .025,412,961)}$$

$$\frac{100}{2.743,484,200 - \text{Mol \% } C_2 (.027,434,842 - .025,412,961)}$$

$$\frac{100}{2.743,484,200 - \text{Mol \% } C_2 (.002,021,881)}$$

$$\frac{100}{2.743,484,200 - \text{Mol \% } C_2 (.002,021,881)}$$

$$\frac{100}{2.743,484,200 - \left(\frac{\text{VP} - 176.4}{6.055} \times .002,021,881 \right)}$$

$$\frac{100}{2.743,484,200 - \left(\frac{\text{VP} - 176.4}{6.055} \times .002,021,881 \right)}$$

$$\frac{100}{2.743,484,200 - [(\text{VP} - 176.4) \times .000,333,919,24]}$$

$$\frac{100}{2.743,484,200 - [(\text{VP} - 176.4) \times .000,333,919,24]}$$

The cubic feet of gas at 60°F. and 16.4 PSIA per gallon of propane-ethane mixture are:

$$\begin{array}{r}
 100 \times \frac{14.696}{16.4} \\
 2,743,484,200 - [(VP-176.4) \times .000,333,919,24] \\
 89.609756 \\
 = 2,743,484,200 - [(VP(NGAA)-176.4) \times .000,333,919,24]
 \end{array}$$

EJY:me

3/21/51

18196

[fol. 400]

EXHIBIT A-20

FPC Gas Rate

Schedule No. 84

Supplement No. 20

Filing Date: Nov 16 1954

Effective Date: Accepted

Received

Nov 16 5 09 AM '54

Federal Power Commission

#18,196

[Emblem]

CITIES SERVICE GAS COMPANY

FIRST NATIONAL BUILDING

OKLAHOMA CITY I, OKLAHOMA

August 31, 1951

Stanolind Oil and Gas Company

P. O. Box 1654

Oklahoma City, Oklahoma

Gentlemen:

On several occasions we have discussed with representatives of your company an agreement which we are endeavoring to make with Kansas-Nebraska Natural Gas Company for the exchange of gas in the Kansas Hugoton Field. Under this agreement, if made, we will connect to their gathering system a small group of wells which are more or less isolated in location and are in close proximity to the gathering system of Kansas-Nebraska. They likewise will deliver gas to us from some of their wells which are somewhat isolated from their system and are in close proximity

to ours. The gathering systems of the respective companies will be interconnected at some point of crossing in order to balance the receipts of gas by each of the parties from the other.

In order to accomplish this arrangement with Kansas-Nebraska, it is necessary that we agree to sell them a small quantity of gas if they need it and if we have allowables from the wells connected to their gathering system over and above that which we need for our own markets. The sale of gas to Kansas-Nebraska will be temporary and their right to purchase such gas shall expire not later than October 22, 1953. The gas which we will sell to Kansas-Nebraska under this arrangement will, of course, be raw gas and will not be available for treatment in your Stano Plant. However, in order that you will suffer no loss through waiving the right to extract liquids from gas which we may sell to Kansas-Nebraska, we propose to enter into an agreement with United Producing Company as outlined below.

As you know, we are now receiving raw gas from United's gathering system serving its carbon black plant in the Hugoton Field. United has some undedicated acreage immediately west of our "A" and "B" gathering systems upon which there are twenty-two wells drilled and to be drilled. Under our existing contract with United, they are obligated to deliver certain quantities of gas. They will substitute gas from the twenty-two wells above referred to on a short term and undedicated basis for gas from acreage dedicated to us which gas is now being delivered through United's system. The aggregate amount of gas which this company will receive from United will not be increased if this substitution is made. By this deal, United will have more gas available for its carbon black processing and this company will receive the same amount of gas as it would if the twenty-two wells were not connected to us. There would be no advantage to us by allowing such substitution by United. However, it would be of advantage to you because such substituted gas from the twenty-two wells would [fol. 401] be available for processing by you in your Stano Plant.

We recognize that under our existing processing agreement you have the right to process gas which may be brought into our "A" or "B" gathering systems and through your plant. Our main consideration, however, in going forward with this agreement with United would be to meet your objections to the loss of liquid hydrocarbons which could have been extracted from any gas which we sell to Kansas-Nebraska under the above mentioned exchange agreement. In order to safeguard you against loss, we agree that the volume of excess gas sold to Kansas-Nebraska shall not exceed that which we receive from United under our proposed substitution agreement with that company.

It should be pointed out also that the consummation of the exchange agreement with Kansas-Nebraska will provide a solution to another problem, namely, that of marketing the gas from three of your joint interest wells, the Orr, Shields, and Wheeler "B", all of your interest therein being dedicated to us and the other interest being dedicated to Kansas-Nebraska. The proposed exchange will avoid the establishment of dual connections which so far the Kansas Corporation Commission has been unwilling to grant.

Another advantage to you in our making the proposed arrangements with Kansas-Nebraska is that it will be possible to connect your Taggart No. 1 in Section 8-24-34, Finney County, Kansas, to Kansas-Nebraska's gathering system prior to your October 10 lease expiration date, whereas it is physically impossible for us to connect such well to our gathering system prior to such expiration date.

If you approve the proposed gas exchange, the wells on the below listed acreage from which your gas is dedicated to us under our Gas Purchase Contract of June 23, 1950, will be connected to Kansas-Nebraska's line, but it is understood that they will remain under the above mentioned Gas Purchase Contract and gas taken from such wells will be accounted for by us to you in accordance with said contract:

Lease or Unit Designation	Location	% Stanolind Working Interest
1. Crawford	Section 7-24S-34W Finney County, Kansas	100%
2. Taggart	Section 8-24S-34W Finney County, Kansas	100%
3. Martin	Section 14-24S-35W Kearny County, Kansas	100%
4. Bardwell	Section 23-24S-35W Kearny County, Kansas	100%
5. Dyckman "A"	Section 26-24S-35W Kearny County, Kansas	100%
6. Dyckman "B"	Section 27-24S-35W Kearny County, Kansas	100%
7. Shields	Section 4-25S-35W Kearny County, Kansas	49.7393%
8. Orr	Section 31-24S-35W Kearny County, Kansas	50%
9. Beymer "B"	Section 7-25-36 Kearny County, Kansas	52.4618%

[fol. 402] We agree to give you a monthly statement of the volume of excess gas sold to Kansas-Nebraska and of the amounts exchanged and in addition, we will give you a like statement of the volume received from United under the proposed agreement with them. We agree that you shall have the right to inspect the balancing meter at the point of interconnection between our system and Kansas-Nebraska's and the meters measuring gas into our system under the proposed agreement with United to the same extent that under our existing contract you have the right to inspect meters measuring gas from Stanolind's wells into our system.

If it is agreeable with you for us to proceed to make the above outlined agreements with Kansas-Nebraska and United in accordance with the conditions set forth above, will you please so indicate in the space hereinbelow provided and return two executed copies of this letter for our

files. We shall then proceed to final execution of our United and Kansas-Nebraska agreements above described.

Yours very truly,

CITIES SERVICE GAS COMPANY

By /s/ GEO. H. BAIRD
Vice President

Accepted this 7th day of September 1951

STANOLIND OIL AND GAS COMPANY

By /s/ (Illegible)
Vice President

Approved—FFD, SSM, KRG, CL

[fol. 403]

EXHIBIT A-21

FPC Gas Rate
Schedule No. 84
Supplement No. 21
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 09 AM '54
Federal Power Commission
#18,196

AGREEMENT TO SUBSTITUTE DEDICATED RESERVES

WHEREAS, under the provisions of Article IV, *Dedication*, of Gas PURCHASE CONTRACT (Hugoton Field, Kansas) between STANOLIND OIL AND GAS COMPANY, as Seller, and CITIES SERVICE GAS COMPANY, as Buyer, dated June 23, 1950, said Seller desires to obtain release of its dedicated reserves thereunder insofar as the same cover the following described lands situated in Finney and Kearny Counties, Kansas, to-wit:

W/2 and SE/4 Section 1-24S-36W, Kearny County, Kansas. NE/4 Section 25 and W/2 Section 35, NW/4 Section 28, E/2 Section 34-25S-32W, the Arkansas River in Section 14, the N/2 Section 14 lying south of the AT&SF Railroad, Lots 1 and 2 and N/2 SW/4 and SE/4 NE/4 SE/4 Section 14 and the Arkansas River in Section 15,

and a 5-acre tract in the SE/c NE/4, Lot 4 and NE/4 SE/4, and a 10-acre tract south of the railroad right-of-way on the east side of the NE/4, Lots 5 and 6; all in Section 15-24S-33W, and the W/2 Section 22-26S-32W, Finney County, Kansas.

and to substitute therefor the following described acreage situated in Finney, Kearny, Seward, and Stanton Counties, Kansas, to-wit:

S/2 Section 13-28S-40W and the S/2 Section 27-29S-40W, Stanton County, Kansas. The N/2 NE/4 and W/2 Section 1-24S-34W and the SE/4 Section 27 and the E/2 Section 29-25S-32W and the NW/4 Section 8 and S/2 NW/4 Section 20-23S-33W, Finney County, Kansas. The E/2 Section 16-32S-33W, Seward County, Kansas. The NE/4 Section 24-23S-36W, and the SE/4 Section 30-23S-35W, Kearny County, Kansas.

NOW THEREFORE, in consideration of the premises and of the mutual covenants herein contained, it is hereby agreed between said Seller and Buyer as follows:

Buyer does hereby release Seller's dedicated reserves from the dedication under said Contract insofar as same cover the lands first above described.

Seller hereby substitutes for said release acreage to the fulfillment and performance of said agreement all of Seller's dedicated reserves under the land's last above described, and Buyer hereby approves said substitution.

DATED, This 16 day of October, 1951.

STANOLIND OIL AND GAS COMPANY

By /s/ V. G. HILL
V. G. Hill
Attorney-in-Fact

Approved—HOL.

ATTEST:

CITIES SERVICE GAS COMPANY

/s/ A. W. LEWAN
Secretary

By /s/ GEO. H. BAIRD
Vice President

[fol. 404]

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before Me, the undersigned, a Notary Public, within and for said County and State, on this 16 day of October, 1951, personally appeared V. G. HILL, to me known to be the identical person who executed the within and foregoing instrument as Attorney-in-Fact of STANOLIND OIL AND GAS COMPANY, a corporation, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ DENTON S. HOWARD
Notary Public

My commission expires:
March 8, 1955

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before Me, the undersigned, a Notary Public in and for said state, on this 26th day of October, 1951, personally appeared GEO. H. BAIRD, to me known to be the identical person who subscribed the name of CITIES SERVICE GAS COMPANY to the foregoing instrument as its Vice President and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

In witness whereof I hereunto set my hand and official seal.

/s/ ROSEMARY BERNEY
Notary Public

My commission expires:
Feb. 25, 1954

[fol. 405]

EXHIBIT A-22

FPC Gas Rate

Schedule No. 84

Supplement No. 22

Filing Date: Nov 16 1954

Effective Date: Accepted

Received

Nov 16 5 09 AM '54

Federal Power Commission

#18,196

AGREEMENT TO SUBSTITUTE DEDICATED RESERVES

WHEREAS, under the provisions of Article IV, *Dedication*, of GAS PURCHASE CONTRACT (Hugoton Field, Kansas) between STANOLIND OIL AND GAS COMPANY, as Seller, and CITIES SERVICE GAS COMPANY, as Buyer, dated June 23, 1950, said Seller desires to obtain release of its dedicated reserves thereunder insofar as the same cover the following described lands situated in Kearny County, Kansas, to-wit:

NE/4 Section 26-24S-37W; SE/4 Section 2 26S-37W; Lot 2 and NE/4 SW/4 Section 8-25S-37W.

and to substitute therefor the following described acreage situated in Kearny County, Kansas, to-wit:

The W/2 Section 3-26S-38W.

Now, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, it is hereby agreed between said Seller and Buyer as follows:

Buyer does hereby release Seller's dedicated reserves from the dedication under said Contract insofar as same cover the lands first above described.

Seller hereby substitutes for said released acreage to the fulfillment and performance of said agreement all of Seller's dedicated reserves under the lands last above described, and Buyer hereby approves said substitution.

DATED, This 25th day of October, 1951.

STANOLIND OIL AND GAS COMPANY

By: /s/ V. G. HILL

V. G. Hill

Its Attorney-in-Fact

Approved—NS, EMC

CITIES SERVICE GAS COMPANY

By: /s/ GEO. H. BAIRD

Vice-President

ATTEST:

/s/ A. W. LEVAN
Asst. Secretary

[fol. 406]

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before Me, the undersigned, a Notary Public, within and for said County and State, on this 25th day of October, 1951, personally appeared V. G. HILL, to me known to be the identical person who executed the within and foregoing instrument as Attorney-in-Fact of STANOLIND OIL AND GAS COMPANY, a corporation, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ M. J. HITCHCOCK
Notary Public

My commission expires:
July 21, 1953

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before Me, the undersigned, a Notary Public, in and for said State, on this 5th day of November, 1951, personally appeared GEO. H. BAIRD, to me known to be the identical person who subscribed the name of CITIES SERVICE GAS COMPANY to the foregoing instrument as its Vice President and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

In witness whereof I hereunto set my hand and official seal.

/s/ ROSEMARY BERNEY
Notary Public

My commission expires:
Feb. 25, 1954

[fol. 407]

EXHIBIT A-23

FPC Gas Rate
Schedule No. 84
Supplement No. 23
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 09 AM '54
Federal Power Commission
#18,196

AGREEMENT

THIS AGREEMENT, Made and entered into this 19 day of Feb., 1952, by and among STANOLIND OIL AND GAS COMPANY, a Delaware corporation, hereinafter sometimes referred to as "Stanolind", CITIES SERVICE GAS COMPANY, a Delaware corporation, hereinafter sometimes referred to as "Cities Service", and JOHN B. HAWLEY, JR., hereinafter sometimes referred to as "Hawley",

WITNESSETH: That,

WHEREAS, Stanolind and Cities Service have entered into a Gas Purchase Contract, dated June 23, 1950, in which

Stanolind is the "Seller" and Cities Service is the "Buyer", said contract being hereinafter referred to as the "Gas Contract", and

WHEREAS, Stanolind has committed to the terms of said Gas Contract the following described Oil and Gas Lease:

Oil and Gas Lease, dated August 1, 1944, between John A. Watson and Lilah Watson, his wife, as Lessors, and Joe E. Denham, as Lessee, covering the following described property, to-wit:

West Half (W¹/₂) of Section Twenty-eight (28), Township Thirty (30) South, Range Thirty-two (32) West, Haskell County, Kansas,

which said lease was recorded in the office of the Register of Deeds in and for said County and State in Book 5 at page 227,

which said lease is hereinafter referred to as the "Watson lease", and

WHEREAS, Hawley is the owner of the lessee's interest in the two (2) following described Oil and Gas Leases:

Oil and Gas Lease, dated December 5, 1956, between Melvin Norby and Ethel Norby, his wife, as Lessors, and The Cooperative Refinery Association, as Lessee, covering the following described property, to-wit:

Southwest Quarter (SW¹/₄) of Section Thirty-two (32), Township Thirty one (31) South, Range Thirty-three (33) West, Seward County, Kansas,

which said lease was recorded in the office of the Register of Deeds in and for said County and State in Book 106 at page 127,

which said lease is hereinafter referred to as the "Norby lease", and

Oil and Gas Lease, dated July 16, 1951, between Wm. P. Elliott, as Trustee under the Last Will and Testament of Peter Hearn, Deceased, pursuant to Order of Probate Court of Meade County, Kansas, dated July 14, 1951, as Lessor, and Northern Ordnance, Incor-

porated, as Lessee, covering the following described property, to-wit:

[fol. 408] Lots Three (3) and Four (4), and South Half of Northwest Quarter (S $\frac{1}{2}$ NW $\frac{1}{4}$), (being the Northwest Quarter (NW $\frac{1}{4}$) of Section Four (4), Township Thirty-two (32) South, Range Thirty-three (33) West, Seward County, Kansas,

which said lease was recorded in the office of the Register of Deeds in and for said County and State in Book 111 at Page 115,

which said lease is hereinafter referred to as the "Hearn lease", and

WHEREAS, the parties hereto desire to release the Watson lease from the terms and conditions of the said Gas Contract and commit in lieu thereof the Norby and Hearn leases to the terms of said contract;

NOW, THEREFORE, in consideration of the mutual covenants hereof and of the dedication by Hawley of additional gas reserves to Cities Service requirements, it is hereby mutually agreed by and between the parties hereto as follows:

1. Cities Service and Stanolind hereby release the Watson lease above described from all the terms and conditions of the Gas Contract.
2. Hawley hereby agrees to unitize the Norby lease with other leases now owned or which may hereafter be acquired by Stanolind in Section Thirty-two (32), Township Thirty-one (31) South, Range Thirty-three (33) West, Seward County, Kansas, and to unitize the Hearn lease with other leases now owned or which may hereafter be acquired by Stanolind in Section Four (4), Township Thirty-two (32) South, Range Thirty-three (33) West, Seward County, Kansas, and that the natural gas produced from said Norby and Hearn leases above described shall be sold to Cities Service under the terms and provisions of the said Gas Contract as fully and effectively as if said leases had been included in Exhibit "A" contained in said Gas Contract on the effective date thereof, and Hawley hereby agrees to be

bound as a "Seller" by the terms and provisions of said Gas Contract in so far as said terms and provisions may be applicable to the said Norby and Hearn leases.

3. Cities Service agrees to purchase the natural gas produced from the Norby and Hearn leases in accordance with all the terms and provisions of the said Gas Contract and agrees to be bound as "Buyer" by all the terms and provisions of said Gas Contract in so far as they apply to the said Norby and Hearn leases.

4. It is understood and agreed that Stanolind will be the operator of any unit of which said Norby and Hearn leases (vol. 400) are a part and that payments for the gas purchased from said Norby and Hearn leases shall be made by Cities Service to Stanolind together with payments for gas purchased from Stanolind in said unit, and that Stanolind hereby agrees to make payment to the owners of all working interests in said unit and all royalties thereunder and to hold Cities Service harmless from any claims of any owners of the working interests or royalty interests in said unit by reason of such payment.

This agreement shall be binding upon the heirs, representatives, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

STANOLIND OIL AND GAS COMPANY

By /s/ V. G. HILL

Its Attorney-in-Fact

Approved—MD, HOL, EMC

CITIES SERVICE GAS COMPANY

By /s/ GEO. H. BAIRD

Vice President

/s/ JOHN B. HAWLEY, JR.
John B. Hawley, Jr.

Attest:

/s/ A. W. LEVAN
Asst. Secretary

STATE OF OKLAHOMA)
) SS:
 COUNTY OF OKLAHOMA)

Before me, the undersigned, a Notary Public within and for said County and State, on this 29 day of February, 1952, personally appeared V. G. HILL, to me known to be the identical person who executed the within and foregoing instrument as Attorney-in-Fact of STANOLIND OIL AND GAS COMPANY, a corporation, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

/s/ M. J. HITCHCOCK
 Notary Public

My commission expires:
 July 21, 1955

[fol. 410]

STATE OF OKLAHOMA)
) SS:
 COUNTY OF OKLAHOMA)

Before me, the undersigned, a Notary Public within and for said County and State, on this 19th day of Feb., 1952, personally appeared GEO. H. BAIRD, to me known to be the identical person who executed the within and foregoing instrument as Vice President of CITIES SERVICE GAS COMPANY, a corporation, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of CITIES SERVICE GAS COMPANY, a corporation, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

/s/ ROSEMARY BERNEY
 Notary Public

My commission expires:
 Feb. 25, 1954

STATE OF FLORIDA)
) SS:
 COUNTY OF DADE)

BE IT REMEMBERED, that on this 5th day of April, 1952, before me, a Notary Public in and for said County and State, personally appeared JOHN B. HAWLEY, JR., who is personally known to me, and known to me to be the same person who executed the foregoing instrument, and such person duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

/s/ WILLIAM (Illegible)
 Notary Public

My Commission Expires:
 Notary Public, State of Florida at large
 My commission expires Mar. 30, 1956
 Bonded by American Surety Co. of N. Y.

[fol. 411]

EXHIBIT A-24

FPC Gas Rate
 Schedule No. 84
 Supplement No. 24
 Filing Date: Nov 16 1954
 Effective Date: Accepted

Received
 Nov 16 5 10 AM '54
 Federal Power Commission

AGREEMENT TO SUBSTITUTE
 DEDICATED RESERVES

WHEREAS, under the provisions of Article IV, *Dedication*, of GAS PURCHASE CONTRACT (Hugoton Field, Kansas) between STANOLIND OIL AND GAS COMPANY, as Seller, and CITIES SERVICE GAS COMPANY, as Buyer, dated June 23, 1950, said Seller desires to obtain release of its dedicated reserves thereunder insofar as the same cover the following described lands situated in Finney and Kearny Counties, Kansas, to-wit:

The Northwest Quarter (NW/4) Section Eighteen
 (18), Township Twenty-four South (T24S), Range

Thirty-seven West (R37W), Kearny County, Kansas, and the North Half (N/2) of the Northeast Quarter (NE/4) and the West Half (W/2) Section One (1), Township Twenty-four South (T24S), Range Thirty-four West (R34W), Finney County, Kansas,

and to substitute therefor the following described acreage situated in Seward County, Kansas, to-wit:

The Northwest Quarter (NW/4) Section Twenty-eight (28), Township Thirty-one South (T31S), Range Thirty-three West (R33W), Seward County, Kansas.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, it is hereby agreed between said Seller and Buyer, as follows:

Buyer does hereby release Seller's dedicated reserves from the dedication under said Contract insofar as same cover the lands first above described.

Seller hereby substitutes for said released acreage to the fulfillment and performance of said agreement all of Seller's dedicated reserves under the lands last above described, and Buyer hereby approves said substitution.

DATED, this 11th day of April, 1952.

STANOLIND OIL AND GAS COMPANY

By /s/ V. G. H.

Its Attorney in Fact

Approved—DNM, NS, EMC

CITIES SERVICE GAS COMPANY

By /s/ GEO. H. BAIRD

Vice President

ATTEST:

/s/ A. W. LEVAN

Asst. Secretary

[fol. 412]

Received

Nov 16 5 10 AM '54

STATE OF OKLAHOMA)

Federal Power Commission

) ss

COUNTY OF OKLAHOMA)

Before me, a Notary Public within and for said County and State, on this 11th day of April, 1952, personally appeared V. G. HILL, to me known to be the identical person who executed the within and foregoing instrument as Attorney in Fact of STANOLIND OIL AND GAS COMPANY, a corporation, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ M. J. HITCHCOCK
Notary Public

My commission expires

July 21, 1953

STATE OF OKLAHOMA)

) ss

COUNTY OF OKLAHOMA)

Before me, a Notary Public in and for said County and State, on this (Illegible) day of (Illegible), 1952; personally appeared GEO. H. BAIRD, to me known to be the identical person who subscribed the name of CITIES SERVICE GAS COMPANY to the foregoing instrument as its Vice President and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ (Illegible)
Notary Public

My commission expires

(Illegible)

[fol. 413]

EXHIBIT A-25

FPC Gas Rate

Schedule No. 84

Supplement No. 25

Filing Date: Nov 16 1954

Effective Date: Accepted

Received

Nov 16 5 10 AM '54

Federal Power Commission

#18,196

AGREEMENT TO SUBSTITUTE DEDICATED RESERVES

WHEREAS, under the provisions of Article IV, *Dedication*, of GAS PURCHASE CONTRACT (Hugoton Field, Kansas) between STANOLIND OIL AND GAS COMPANY, as Seller, and CITIES SERVICE GAS COMPANY, as Buyer, dated June 23, 1950, said Seller desires to obtain release of its dedicated reserves thereunder insofar as the same cover the following described lands situated in Kearny County, Kansas, to-wit:

The East Half (E/2) of Section Four (4), Township Twenty-four South (T24S), Range Thirty-seven West (R37W).

and to substitute therefor the following described acreage situated in Kearny County, Kansas, to-wit:

The North Half (N/2) Section Five (5), Township Twenty-four South (T24S), Range Thirty-seven West (R37W).

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, it is hereby agreed between said Seller and Buyer as follows:

Buyer does hereby release Seller's dedicated reserves from the dedication under said Contract insofar as same cover the lands first above described.

Seller hereby substitutes for said released acreage to the fulfillment and performance of said agreement all of Seller's dedicated reserves under the lands last

above described and Buyer hereby approves said substitution.

DATED, This 6 day of May, 1952.

STANOLIND OIL AND GAS COMPANY

By /s/ V. G. HILL

V. G. Hill, Attorney-in-Fact

Approved—EMC, NS.

CITIES SERVICE GAS COMPANY

By /s/ GEO. H. BAIRD

Vice-President

ATTEST:

/s/ A. W. LEVAN

Asst. Secretary

[fol. 414]

STATE OF OKLAHOMA

COUNTY OF OKLAHOMA

Before Me, the undersigned, a Notary Public, within and for said County and State, on this 6 day of May, 1952, personally appeared V. G. HILL, to me known to be the identical person who executed the within and foregoing instrument as Attorney-in-Fact, of STANOLIND OIL AND GAS COMPANY, a corporation, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ M. J. HITCHCOCK
Notary Public

My commission expires:

7-21-53

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before Me, the undersigned, a Notary Public in and for said State, on this 8th day of May, 1952, personally appeared GEO. H. BAIRD, to me known to be the identical person who subscribed the name of CITIES SERVICE GAS COMPANY to the foregoing instrument as its Vice-President and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

In witness whereof I hereunto set my hand and official seal.

/s/ ROSEMARY BERNEY
Notary Public

My commission expires: 2/25/54

[fol. 415]

EXHIBIT A-26

FPC Gas Rate

Schedule No. 84

Supplement No. 26

Filing Date: Nov 16 1954

Effective Date: Accepted

Received

Nov 16 5 10 AM '54

Federal Power Commission

AGREEMENT TO SUBSTITUTE DEDICATED RESERVES

WHEREAS, under the provisions of Article IV, *Dedication*, of GAS PURCHASE CONTRACT (Hugoton Field, Kansas) between STANOLIND OIL AND GAS COMPANY, as Seller, and CITIES SERVICE GAS COMPANY, as Buyer, dated June 23, 1950, said Seller desires to obtain release of its dedicated reserves thereunder insofar as the same cover the following described lands situated in Finney County, Kansas, to-wit:

All that part of Section 1-25S-33W, Finney County, Kansas, lying East of U.S. Highway No. 83 as now located, containing 200 acres more or less.

and to substitute therefor the following described acreage situated in Seward County, Kansas, to-wit:

The NW/4 of Section 32-31S-33W.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, it is hereby agreed between said Seller and Buyer as follows:

Buyer does hereby release Seller's dedicated reserves from the dedication under said Contract insofar as same cover the lands first above described.

Seller hereby substitutes for said released acreage to the fulfillment and performance of said agreement all of Seller's dedicated reserves under the lands last above described, and Buyer hereby approves said substitution.

DATED, This 27th day of June, 1952.

STANOLIND OIL AND GAS COMPANY

By /s/ V. H. HILL

V. H. Hill, Attorney-in-Fact

Approved—EMC, NS

CITIES SERVICE GAS COMPANY

By /s/ GEO. H. BAIRD
Vice President

ATTEST:

/s/ A. W. LEVAN
Asst. Secretary

[fol. 416]

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before Me, the undersigned, a Notary Public, within and for said County and State, on this 27th day of June, 1952, personally appeared V. G. HILL, to me known to be the identical person who executed the within and foregoing instrument as Attorney-in-Fact of STANOLIND OIL AND GAS COMPANY, a corporation, and acknowledged to me that he

executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ M. J. HITCHCOCK
Notary Public

My commission expires: July 21, 1953

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before Me, the undersigned, a Notary Public in and for said state, on this 7th day of July, 1952, personally appeared GEO. H. BAIRD, to me known to be the identical person who subscribed the name of CITIES SERVICE GAS COMPANY to the foregoing instrument as its Vice-President and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

In witness whereof I hereunto set my hand and official.

/s/ ROSEMARY BERNEY
Notary Public

My commission expires:
Feb. 25, 1954

[fol. 417]

EXHIBIT A-27

FPC Gas Rate

Schedule No. 84

Supplement No. 27

Filing Date: Nov 16 1954

Effective Date: Accepted

Received

Nov 16 5 10 AM '54

Federal Power Commission

AGREEMENT TO SUBSTITUTE DEDICATED RESERVES

WHEREAS, under the provisions of Article IV, *Dedication*, of GAS PURCHASE CONTRACT (Hugoton Field, Kansas) between STANOLIND OIL AND GAS COMPANY, as Seller, and CITIES SERVICE GAS COMPANY, as Buyer, dated June 23, 1950, said Seller desires to obtain release of its dedicated reserves thereunder insofar as the same cover the following described lands situated in Kearny County, Kansas, to-wit:

The SE/4 and the NW/4 of Section 23-23S-37W

and to substitute therefor the following described acreage situated in Kearny County, Kansas, to-wit:

The NW/4 Section 22 and the NW/4 Section 27-23S-37W

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, it is hereby agreed between said Seller and Buyer as follows:

Buyer does hereby release Seller's dedicated reserves from the dedication under said Contract insofar as same cover the lands first above described.

Seller hereby substitutes for said released acreage to the fulfillment and performance of said agreement all of Seller's dedicated reserves under the lands last above described, and Buyer hereby approves said substitution.

DATED, This 17 day of July, 1952.

STANOLIND OIL AND GAS COMPANY

By /s/ V. G. HILL

V. G. Hill, Attorney-in-Fact

Approved—RGW, DEC, HOL

CITIES SERVICE GAS COMPANY

By /s/ GEO. H. BAIRD

Vice-President

ATTEST:

/s/ W. R. MORTON
Secretary

18196

[fol. 418]

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before Me, the undersigned, a Notary Public, within and for said County and State, on this 17 day of July, 1952, personally appeared V. G. HILL, to me known to be the identical person who executed the within and foregoing instrument as Attorney-in-Fact of STANOLIND OIL AND GAS COMPANY, a corporation, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ M. J. HITCHCOCK
Notary Public

My commission expires: 7-21-53

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before Me, the undersigned, a Notary Public in and for said State, on this 24th-day of July, 1952, personally appeared GEO. H. BAIRD, to me known to be the identical person who subscribed the name of CITIES SERVICE GAS COMPANY to the foregoing instrument as its Vice-President and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

In witness whereof I hereunto set my hand and official seal.

/s/ ROSEMARY BERNEY
Notary Public

My commission expires:
Feb. 25, 1954

[fol. 419]

EXHIBIT A-28

JPM:sh 7/22/52

FPC Gas Rate

Schedule No. 84

Supplement No. 28

Filing Date: Nov 16 1954

Effective Date: Accepted

Received

Nov 16 5 10 AM '54

Federal Power Commission

AGREEMENT TO DEDICATE RESERVES

WHEREAS, STANOLIND OIL AND GAS COMPANY is the owner of the following described oil and gas leases covering land situate in Kearny County, Kansas, to-wit:

Lease No: 78824-C

Dated:	January 23, 1952
Filed:	February 20, 1952
Recorded:	Book 21 at Page 280
Lessors:	Mrs. L. E. Duncan, et vir E. E.
Lessee:	Stanolind Oil and Gas Company

Lease No. 78824-D

Dated: February 26, 1952
 Filed: March 6, 1952
 Recorded: Book 21 at Page 591
 Lessors: B. C. Messenger, et vir I. E.
 Lessee: Stanolind Oil and Gas Company;

and,

WHEREAS, the land covered by said leases, situate in said County and State, is described as follows, to-wit:

The Northeast Quarter (NE/4) of Section Thirty-One (31), Township Twenty-Five South (T25S), Range Thirty-Seven West (R37W);

and,

WHEREAS, under the provisions of Article IV, Dedication, of GAS PURCHASE CONTRACT (Hugoton Field, Kansas) between STANOLIND OIL AND GAS COMPANY, as Seller, and CITIES SERVICE GAS COMPANY, as Buyer, dated June 23, 1950, said Seller desires to dedicate to the fulfillment and performance of said agreement all of Seller's dedicated reserves under the above described lands acquired by Seller under the leases above set forth.

NOW, THEREFORE, in consideration of the premises, and of the mutual covenants herein contained, Seller hereby dedicates to the fulfillment and performance of said agreement all of Seller's dedicated reserves under the lands above described acquired by Seller under the leases above set forth, and Buyer approves and accepts said dedication.

DATED, this 25 day of July, 1952.

STANOLIND OIL AND GAS COMPANY

By /s/ K. W. BOLT
 Attorney in Fact

Approved- COD, EMC, DEM

ATTEST:

CITIES SERVICE GAS COMPANY

/s/ A. W. LEVAN
 Asst. Secretary

By /s/ GEO. H. BAIRD
 Vice-President

[fol. 420]

STATE OF OKLAHOMA)

) SS

COUNTY OF OKLAHOMA)

Before me, the undersigned, a Notary Public within and for said County and State, on this 25th day of July, 1952, personally appeared K. W. BOLT, to me known to be the identical person who executed the within and foregoing instrument as Attorney in Fact of STANOLIND OIL AND GAS COMPANY, a corporation; and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ HELEN E. MOISES
Notary Public

My commission expires:
August 22, 1953

STATE OF OKLAHOMA)

) SS

COUNTY OF OKLAHOMA)

Before me, the undersigned, a Notary Public within and for said County and State, on this 30th day of July, 1952, personally appeared GEO. H. BAIRD, to me known to be the identical person who subscribed the name of CITIES SERVICE GAS COMPANY to the foregoing instrument as its Vice President, and duly acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ ROSEMARY BERNEY
Notary Public

My commission expires:
Feb. 25, 1954

[fol. 421]

EXHIBIT A-29

JPM:sh 9/9/52

FPC Gas Rate

Schedule No. 84

Supplement No. 29

Filing Date: Nov 16 1954

Effective Date: Accepted

Received

Nov 16 5 10 AM '54

Federal Power Commission

AGREEMENT TO DEDICATE RESERVES

WHEREAS, STANOLIND OIL AND GAS COMPANY is the owner of the following described oil and gas lease covering land situate in Kearny County, Kansas, to-wit:

Lease No. 128537

Dated: July 30, 1952

Lessors: Carl B. Bentrup, et ux

Mercedes J.

Lessee: Stanolind Oil and Gas Company

and,

WHEREAS, the land covered by said lease, situate in said County and State, is described as follows, to-wit:

A tract of land 28 rods East and West by 17 1/17 rods North and South in the Southwest corner of the E/2 SW/4, it being the intention to cover all the lessors' interest in Section 8-T24S-R35W;

and

WHEREAS, under the provisions of Article IV, Dedication, of GAS PURCHASE CONTRACT (Hugoton Field, Kansas) between STANOLIND OIL AND GAS COMPANY, as Seller, and CITIES SERVICE GAS COMPANY, as Buyer, dated June 23, 1950, said Seller desires to dedicate to the fulfillment and performance of said agreement all of Seller's dedicated reserves under the above described lands acquired by Seller under the lease above set forth.

NOW, THEREFORE, in consideration of the premises, and of the mutual covenants herein contained, Seller hereby dedicates to the fulfillment and performance of said agreement

all of Seller's dedicated reserves under the lands above described acquired by Seller under the lease above set forth, and Buyer approves and accepts said dedication.

DATED, this 12 day of November, 1952.

STANOLIND OIL AND GAS COMPANY

By /s/ V. G. HILL
Attorney in Fact

Approved—FFD, and 3 sets of illegible initials

CITIES SERVICE GAS COMPANY

By /s/ GEO. H. BAIRD
Vice-President

ATTEST:

/s/ A. W. LEVAN
Asst. Secretary

18196

[fol. 422]

STATE OF OKLAHOMA)
) SS
COUNTY OF OKLAHOMA)

Before me, the undersigned, a Notary Public within and for said County and State, on this 12 day of November, 1952, personally appeared V. G. HILL, to me known to be the identical person who executed the within and foregoing instrument as Attorney in Fact of STANOLIND OIL AND GAS COMPANY, a corporation, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written:

/s/ M. J. HITCHCOCK
Notary Public

My commission expires: July 21, 1953

STATE OF OKLAHOMA)
) SS
 COUNTY OF OKLAHOMA)

Before me, the undersigned, a Notary Public within and for said County and State, on this 13th day of November, 1952, personally appeared GEO. H. BAIRD, to me known to be the identical person who subscribed the name of CITIES SERVICE GAS COMPANY, to the foregoing instrument as its Vice President, and duly acknowledged to me that he executed the same as his free and voluntary act and deed and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ ROSEMARY BERNEY
 Notary Public

My commission expires:
 Feb. 25, 1954

[fol. 423]

EXHIBIT A-30

3/10/53 EOL:sh

FPC Gas Rate

Schedule No. 8

Supplement No. 30

Filing Date: Nov 16 1954

Effective Date: Accepted

Received

Nov 16 5 10 AM '54

Federal Power Commission

RELEASE FROM DEDICATION

WHEREAS, STANOLIND OIL AND GAS COMPANY, a corporation, hereinafter referred to as "Stanolind," and CITIES SERVICE GAS COMPANY, a corporation, hereinafter referred to as "Cities Service," entered into a certain Gas Purchase Contract on the 23d day of June, 1950, wherein Stanolind, subject to the terms, covenants and conditions thereof, agreed to sell, and Cities Service agreed to buy, all of the natural gas produced and saved from leases owned by

Stanolind covering lands described in Exhibit "A," attached to such contract and made a part thereof; and,

WHEREAS Stanolind and Cities Service entered into a certain Gas Processing Agreement on the 23d day of June, 1950, wherein Cities Service, subject to the terms, covenants and conditions thereof, agreed to deliver all natural gas purchased from Stanolind under the Gas Purchase Contract described in the last preceding paragraph, in so far as such natural gas was or may be produced from Areas "A" and "B" described in Exhibit "A," attached to said Gas Processing Agreement and made a part thereof, to Stanolind for processing at its gasoline plant located in Section 5, Township 29 South, Range 38 West, Grant County, Kansas; and

WHEREAS, the following described lease, covering land situated in Kearny County, State of Kansas, was committed and dedicated to said Gas Purchase Contract and said Gas Processing Agreement, to-wit:

Lessor: The Garden City Company
 Lessee: Joe E. Denham
 Date: June 1, 1943
 Recorded: Book 10, at Page 219

in so far, and only in so far, as said lease covers the following described land in said County and State, to-wit:

A tract of land in Northwest Quarter (NW $\frac{1}{4}$) of Section 24, Township 24 South, Range 35 West, beginning at the northwest corner of Section 24, Township 24 South, Range 35 West. Thence east twenty feet, thence South twenty feet to the beginning of this survey, thence east and along south line of highway 350 feet, thence South and parallel to Section line 623.8 feet, thence South 38 degrees 15' west 552.4 feet to east line of highway, thence north along said east line of highway 1066.4 feet to the place of beginning and containing 6.83 acres.

[Vol. 424] WHEREAS, it is the desire of the parties hereto that said lease, in so far as it covers the land above

described, shall be released from the terms, covenants and conditions of said Gas Purchase Contract and said Gas Processing

Purchasing Agreement to the same extent as though it had been specifically excepted in each of said contracts.

Now, THEREFORE, in consideration of the premises and other good and valuable considerations, the receipt and the sufficiency of which are hereby acknowledged by each of the parties hereto, Stanolind and Cities Service do hereby agree that the oil and gas lease above described, in so far as such lease covers the land above described, shall be, and is hereby, released from all the terms, covenants and conditions of said Gas Purchase Contract and said Gas Processing Agreement to the same extent as though said lease had been specifically excepted in each of said contracts.

It is agreed and understood that this "Release from Dedication" shall not apply to lands subject to said lease other than those specifically above described.

IN WITNESS WHEREOF, this instrument is executed as of this 16th day of March, 1953.

STANOLIND OIL AND GAS COMPANY

By /s/ V. G. HILL

Its Attorney in Fact

Approved—HOL, EMC

CITIES SERVICE GAS COMPANY

By /s/ GEO. H. BAIRD

Vice President

ATTEST:

/s/ A. W. LEVAN

Asst. Secretary

DATED, This 25th day of May, 1953.

STANOLIND OIL AND GAS COMPANY

By /s/ V. G. HILL

V. G. Hill

Its Attorney-in-Fact

Approved—HOL, R6W

CITIES SERVICE GAS COMPANY

By /s/ GEO. H. BAIRD

Vice President

ATTEST:

/s/ A. W. LEVAN

Asst. Secretary

18196

[fol. 427]

STATE OF OKLAHOMA

COUNTY OF OKLAHOMA

Before Me, the undersigned, a Notary Public, within and for said County and State, on this 25th day of May, 1953, personally appeared V. G. Hill, to me known to be the identical person who executed the within and foregoing instrument as Attorney-in-Fact of STANOLIND OIL AND GAS COMPANY, a corporation, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ M. J. HITCHCOCK

Notary Public

My commission expires:

7-21-53

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before Me, the undersigned, a Notary Public in and for said State, on this 2nd day of June, 1953, personally appeared GEO. H. BAIRD, to me known to be the identical person who subscribed the name of CITIES SERVICE GAS COMPANY to the foregoing instrument as its Vice President and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

In witness whereof I hereunto set my hand and official seal.

/s/ ROSEMARY BERNEY
Notary Public

My commission expires:
Feb. 25, 1954

[fol. 428]

EXHIBIT A-32

FPC Gas Rate
Schedule No. 84
Supplement No. 32
Filing Date: Nov 16 1954
Effective Date: Accepted

Received
Nov 16 5 10 AM '54
Federal Power Commission

AGREEMENT TO SUBSTITUTE
DEDICATED RESERVES

WHEREAS, under the provisions of Article IV, *Dedication*, of GAS PURCHASE CONTRACT (Hugoton Field, Kansas) between STANOLIND OIL AND GAS COMPANY, as Seller, and CITIES SERVICE GAS COMPANY, as Buyer, dated June 23, 1950, said Seller desires to obtain release of its dedicated reserves thereunder insofar as the same cover the following described lands situated in Kearny County, Kansas, to-wit:

N/2 Section 26-23S-37W

and to substitute therefor the following described acreage situated in Kearny County, Kansas, to-wit:

NE/4 Section 14-23S-36W

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, it is hereby agreed between said Seller and Buyer as follows:

Buyer does hereby release Seller's dedicated reserves from the dedication, under said Contract insofar as same cover the lands first above described.

Seller hereby substitutes for said released acreage to the fulfillment and performance of said agreement all of Seller's dedicated reserves under the lands last above described, and Buyer hereby approves said substitution.

DATED, This 28th day of May, 1953.

STANOLIND OIL AND GAS COMPANY

By /s/ V. G. HILL
V. G. Hill
Attorney-in-Fact

Approved—HOL

CITIES SERVICE GAS COMPANY

By /s/ GEO. H. BAIRD
Vice President

ATTEST:

/s/ A. W. LEVAN
Secretary

[fol. 429]

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before Me, the undersigned, a Notary Public, within and for said County and State, on this 28th day of May, 1953, personally appeared V. G. HILL, to me known to be the identical person who executed the within and foregoing instrument as Attorney-in-Fact of STANOLIND OIL AND GAS COMPANY, a corporation, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ M. J. HITCHCOCK
Notary Public

My commission expires:
July 21, 1953

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Before Me, the undersigned, a Notary Public in and for said State, on this (illegible) day of (illegible), 1953, personally appeared GEO. H. BAIRD, to me known to be the identical person who subscribed the name of CITIES SERVICE GAS COMPANY to the foregoing instrument as its Vice President and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

In witness whereof I hereunto set my hand and official seal.

/s/ ROSEMARY BERNEY
Notary Public

My commission expires: -
Feb. 25, 1954

[fol. 425]

STATE OF OKLAHOMA)
) SS
COUNTY OF OKLAHOMA)

Before me, the undersigned, a Notary Public within and for said County and State, on this 16th day of March, 1953, personally appeared V. G. HILL, to me known to be the identical person who executed the within and foregoing instrument as Attorney in Fact of STANOLIND OIL AND GAS COMPANY, a corporation, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of STANOLIND OIL AND GAS COMPANY, a corporation, for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ M. J. HITCHCOCK
Notary Public


My commission expires: July 21, 1953

STATE OF OKLAHOMA)
) SS
COUNTY OF OKLAHOMA)

Before me, the undersigned, a Notary Public within and for said County and State, on this 25th day of March, 1953, personally appeared GEO. H. BAIRD, to me known to be the identical person who subscribed the name of CITIES SERVICE GAS COMPANY to the foregoing instrument as its Vice President, and duly acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

In testimony whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ ROSEMARY BERNEY
Notary Public

My commision expires: 
Feb. 25, 1954

[fol. 426]

EXHIBIT A-31

FPC Gas Rate

Schedule No. 84

Supplement No. 31

Filing Date: Nov 16 1954

Effective Date: Accepted

Received

Nov 16 5 10 AM '54

Federal Power Commission

AGREEMENT TO SUBSTITUTE DEDICATED RESERVES

WHEREAS, under the provisions of Article IV, *Dedication*, of GAS PURCHASE CONTRACT (Hugoton Field, Kansas) between STANOLIND OIL AND GAS COMPANY, as Seller and CITIES SERVICE GAS COMPANY, as Buyer, dated June 23, 1950, said Seller desires to obtain release of its dedicated reserves thereunder insofar as the same cover the following described lands situated in Finney County, Kansas, to-wit:

SW/4 Section 6-23S-32W

and to substitute therefor the following described acreage situated in Finney County, Kansas, to-wit:

NE/4 Section 1-23S-33W

Now, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, it is hereby agreed between said Seller and Buyer as follows:

Buyer does hereby release Seller's dedicated reserves from the dedication under said Contract insofar as same cover the lands first above described.

Seller hereby substitutes for said released acreage to the fulfillment and performance of said agreement all of Seller's dedicated reserves under the lands last above described, and Buyer hereby approves said substitution.

[fol. 430].

EXHIBIT A-33

FPC Gas Rate

Schedule No. 84

Supplement No. 33

Filing Date: Nov 16 1954

Effective Date: Accepted

Received

Nov 16 5 10 AM '54

Federal Power Commission

RELEASE

WHEREAS, in accordance with the provisions of Article IV, Sub-Section 3 of Gas Purchase Contract (Hugoton Field, Kansas) between STANOLIND OIL AND GAS COMPANY, as Seller, and CITIES SERVICE GAS COMPANY, as Buyer, dated June 23, 1950, said Seller did on May 6, 1953, tender to Buyer the oil and gas leases described in Exhibit "A" hereto attached and hereof made a part insofar as said leases cover Seller's gas rights in and to the gas producing zones at depths above sea level, and Buyer does not desire to accept assignment of said leases.

NOW, THEREFORE, in consideration of the premises, Cities Service Gas Company does hereby release and quitclaim all its rights to such assignment and releases said oil and gas leases from the terms of said Gas Purchase Contract the same as though said leases had not been scheduled and dedicated thereunder.

DATED, This day of , 1953.

CITIES SERVICE GAS COMPANY

By: /s/ GEO. H. BAIRD
Vice President

Attest:

/s/ W. R. MORTON
Secretary

STATE OF KANSAS
COUNTY OF

Before me, ROSEMARY BERNEY, a Notary Public in and for said County and State, on this 8 day of June, 1953, personally appeared GEO. H. BAIRD, to me known to be the identical person who subscribed the name of CITIES SERVICE GAS COMPANY to the foregoing instrument as its President and acknowledged to me, that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

In witness whereof I hereunto set my hand and official seal.

/s/ ROSEMARY BERNEY
Notary Public

My Commission Expires:
Feb. 25, 1954

18196

[fol. 431]

LEASE SCHEDULE

EXHIBIT "A" PAGE ONE

STATE OF KANSAS

COUNTY OF STANTON

AFE 4239

mc 5-20-53

Lease No.	Lessor	Lessee	Date	Description	Recorded Book Page
48602	Fred H. Staker, et ux	Joe E. Denham	7-17-43	SE/4 Sec. 3-30S-40W.	3 82
48670	Justin Jones, et ux	Joe E. Denham	7-13-43	Insofar as the lease covers and affects: NE/4 Sec. 33-29S-40W.	3 98
48768	George J. Peppercorn	Joe E. Denham	7-27-43	W/2 Sec. 3-30S-40W.	3 121
50030	F. E. Plummer, et ux	Joe E. Denham	7-14-43	Insofar as the lease covers and affects: NE/4 Sec. 3-30S-40W.	3 257

Received

Nov 16 5 10 AM '54

Federal Power Commission

[fol. 432]

EXHIBIT A-34

FPC Gas Rate

Schedule No. 84

Supplement No. 34

Filing Date: Nov 16 1954

Effective Date: Accepted

Received

Nov 16 5 11 AM '54

Federal Power Commission

#18196

[Emblem]

CITIES SERVICE GAS COMPANY

FIRST NATIONAL BUILDING

OKLAHOMA CITY 1, OKLAHOMA

June 8, 1953

Stanolind Oil and Gas Company

P. O. Box 1654

Oklahoma City, Oklahoma

Gentlemen:

Attn: Mr. E. W. Cook

This will acknowledge receipt of your letters of May 12, 14 and 15, tendering Cities Service Gas Company acreage, as listed below, in the Kansas Hugoton Field all in accordance with the terms of Paragraph 3, Article 4 of our Gas Purchase Contract dated June 23, 1950:

Lease No.	Description
48736	SW/4 Sec. 15-29S-33W
49972	NW/4 Sec. 15-29S-33W
48590	SE/4 Sec. 4-31S-40W
48421	NE/4 Sec. 14-29S-40W
48911	SW/4 Sec. 26-29S-40W
49867	SE/4 Sec. 26-29S-40W
50999	SE/4 Sec. 35-29S-40W
48742	SW/4 Sec. 35-29S-40W
49868	N/2 Sec. 26-29S-40W
48598	SE/4 Sec. 14-29S-40W
48839	NW/4 Sec. 14-29S-40W
67827	SE. & S/2 NE 6-26S-31W

76901	SW/4 Sec. 26-28S-32W
76902	NW/4 Sec. 26-28S-32W
76851	NE/4 Sec. 35-28S-32W
76852	SW/4 Sec. 35-28S-32W
76853	NW/4 Sec. 35-28S-32W
76859	SE/4 Sec. 26-28S-32W
76860	NE/4 Sec. 26-28S-32W
76861	SE/4 Sec. 35-28S-32W
76899	S/2 Sec. 6-28S-32W
77438	N/2 Sec. 6-28S-32W
76861	NE/4 Sec. 34-28S-32W

We do not wish assignment of this acreage and therefore do hereby release it from the terms of our contract.

Yours very truly,

CITIES SERVICE GAS COMPANY

/s/ GEO. H. BAIRD

Geo. H. Baird, Vice President

GHB/RWH/c

[fol. 433]

EXHIBIT A-35

FPC Gas Rate

Schedule No. 84

Supplement No. 35

Filing Date: Nov 16 1954

Effective Date: Accepted

Received

Nov 16 5 11 AM '54

Federal Power Commission

#18196

STANOLIND OIL AND GAS COMPANY

FIRST NATIONAL BUILDING

OKLAHOMA CITY, OKLAHOMA

June 9, 1953

Re: AFE-4239

31 South - 40 West

Morton County, Kansas

Cities Service Gas Company

First National Building

Oklahoma City, Oklahoma

Attention: Mr. Geo. C. Roth

Gentlemen:

In accordance with Paragraph 3, Article 4, of Gas Purchase Contract dated June 23, 1950, we wish to offer to you assignment of the following leases:

Lease No.	Description	Expiration Date
49317	N/2 Section 5-31S-40W	7-20-53
48549	SW/4 Section 5-31S-40W	7-22-53
48938	SE/4 Section 5-31S-40W	7-20-53
48825	NW/4 Section 6-31S-40W	7-20-53
48593	NE/4 Section 6-31S-40W	7-20-53
48933	SE/4 Section 6-31S-40W	7-16-53
55491	SW/4 Section 6-31S-40W	3-17-54
79084	W/2 Section 7-31S-40W	7-16-53
49737	SE/4 Section 7-31S-40W	7-19-53
59015	W/2 NE/4 Section 7-31S-40W	6-10-54
49736	E/2 NE/4 Section 7-31S-40W	9- 1-53
48450	NE/4 Section 8-31S-40W	7-14-53

49974	NW/4 Section 8-31S-40W	7-20-53
48583	SW/4 Section 8-31S-40W	7-20-53
49676	SE/4 Section 8-31S-40W	8-28-53

You will note that the leases described above (the majority of which expire in July, 1953) were among the group which you allowed Stanolind until June 20, 1953 in which to offer said leases to you, as described in our letter of May 13, 1953.

If you wish assignment of these leases in accordance with the above mentioned contract, please advise and we will have the necessary instrument prepared and executed. If [fol. 434] you do not desire said assignments, kindly indicate in the space provided below and return a copy of this letter to this office.

Very truly yours,

STANOLIND OIL AND GAS COMPANY

By /s/ E. W. COOK
E. W. Cook
Division Landman

RGW:oh

We do not wish assignment of the above leases and hereby release said leases from the terms of said Gas Purchase Contract, the same as though said leases had not been scheduled and dedicated thereunder.

CITIES SERVICE GAS COMPANY

By /s/ GEO. H. BAIRD
Vice Pres.

[fol. 435]

EXHIBIT A-36

FPC Gas Rate

Schedule No. 84

Supplement No. 36

Filing Date: Nov 16 1954

Effective Date: Accepted

Received

Nov 16 5 11 AM '54

Federal Power Commission

#18,196

[Emblem]

CITIES SERVICE GAS COMPANY
FIRST NATIONAL BUILDING
OKLAHOMA CITY 1, OKLAHOMA

June 9, 1953

Stanolind Oil and Gas Company

P. O. Box 591

Tulsa 2, Oklahoma

Gentlemen:

Pursuant to discussions and correspondence between representatives of our respective companies, we desire to arrange for closing the individual well measurement accounts each month with the weekly charts removed during the seven (7) day period ending the twenty-second day of each calendar month.

Our reasons for desiring such change have been fully explained in discussions with your representatives and it is our belief that the change suggested should eliminate delays heretofore experienced in getting information to you.

Under our proposed plan certain charts will be changed on Monday and certain other charts on Tuesday, etc., to and including Friday of each week. Our chart routes will be established so that, except for unforeseen contingencies, the charts from any individual meter will be removed the same day of each week.

We, therefore, propose that paragraph 6 of Article II, Definitions, of the Gas Purchase Contract dated June 23, 1950, be amended to read as follows:

Fiscal accounting month shall mean that period of time beginning with the "on date" of the last chart placed on a meter within seven days prior to the 23rd day of each calendar month and shall end with the "off date" of the last chart removed from that meter within seven days prior to the 23rd day of the next succeeding calendar month. Except for the unforeseen contingencies charts shall be removed from a meter on the same day of each week.

If the foregoing amendment is satisfactory to you, please so indicate by signing and returning to us two (2) copies of this letter, whereupon said contract shall be deemed to be so amended.

Yours very truly, .

CITIES SERVICE GAS COMPANY

By /s/ GEO. H. BAIRD
Vice President

AMENDMENT AGREED TO:

STANOLIND OIL AND GAS COMPANY

By /s/ FRANK LINDEMAN, JR.
Vice President